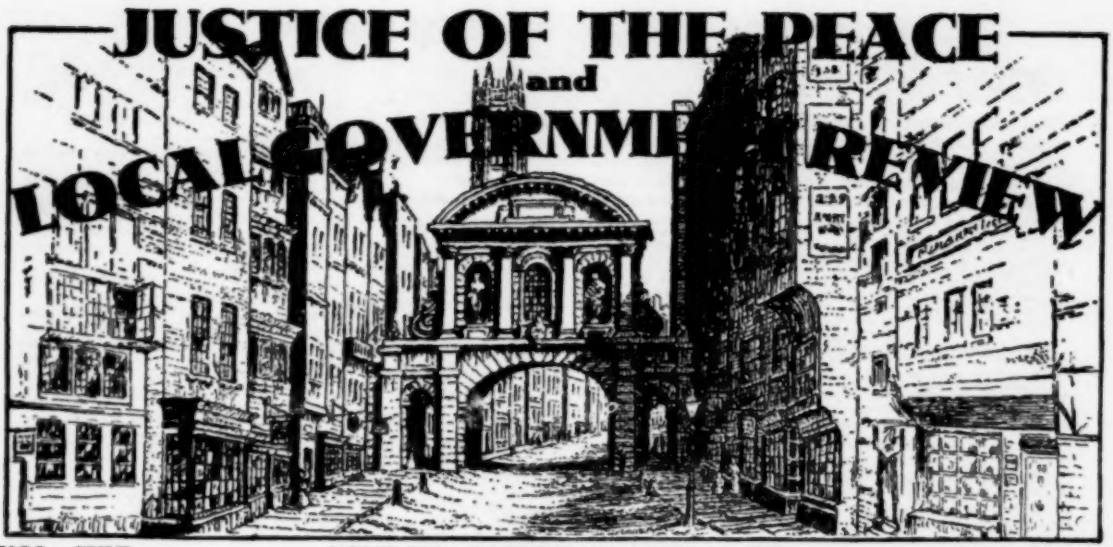

VOL. CXVI LONDON: SATURDAY, MAY 3, 1952 No. 18

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REPORTS

Official & Classified Advertisements, etc.

Official Advertisements (Appointments, Tenders, etc.), 2s. per line and 3s. per displayed headline. Classified Advertisements, 24 words 6s. (each additional line 1s. 6d.) Box Number, 1s. extra *Latest time for receipt* 10 *a.m. Thursday*

Published by JUSTICE OF THE PEACE LTD., Little London, Chichester, Sussex
Telephone : CHICHESTER 3637 (P.B.E.) *Telegraphic Address :* JUSLOCGOV, CHICHESTER

NOTIFICATION OF VACANCIES ORDER, 1952

The engagement of persons answering these advertisements must be made through a Local Office of the Ministry of Labour or a Scheduled Employment Agency if the applicant is a man aged 18-64 or a woman aged 18-59 inclusive unless he or she, or the employment, is excepted from the provisions of the Notification of Vacancies Order, 1952. *Note :* Barristers, Solicitors, Local Government Officers, Police Officers and Social Workers are excepted from the provisions of the Order, as is employment in a managerial, professional, administrative or executive capacity.

SITUATIONS VACANT

LEWISHAM M.B.C. requires LAW CLERK, experience in conveyancing and compulsory acquisition of land essential. Salary scale £530—£620 plus London " weighting." (A.P.T. IV-V). Local Supn. Act. Further particulars and forms of application from Town Clerk, Lewisham Town Hall, Catford, S.E.6. Closing date May 19, 1952.

CHATFIELD HOUSE, WHETSTONE. The London Police Court Mission requires a warden, with wife as matron, for this Approved Probation Hostel for 18 boys, ages 15 and under 18. Sense of vocation, a good education and experience of work among difficult boys essential. Knowledge of craftwork an advantage. The commencing salary for the joint appointment will be not less than £600 per annum with repayment of £148 for board and residence.

Applications, with names of three referees to General Secretary, London Police Court Mission, 2 Hobart Place, S.W.1.

LECTURE

GRESHAM COLLEGE, Basinghall St., London, E.C.2. Four Lectures on " FAMILY RELATIONSHIPS " by Richard O'Sullivan, Esq., Q.C., on Mon. to Thurs., May 5th to 8th. The Lectures are FREE and begin at 5.30 *p.m.*

INQUIRIES

PARKINSON & CO., East Boldon, Co. Durham. Private and Commercial Investigators. Instructions accepted from Solicitors only. Tel. : Boldon 7301. Available day and night.

YORKSHIRE DETECTIVE BUREAU (Hoylands), **Ex-Detective Sergeant.** Member of B.D.A. and F.B.D. DIVORCE—CONFIDENTIAL ENQUIRIES, ETC., anywhere. Over 400 agents in all parts of the U.K. and abroad. 1, Mayo Road, Bradford. Tel. 26823, day or night.

COUNTY BOROUGH OF EAST HAM

Town Clerk's Department

Town Planning Assistant

APPLICATIONS are invited for the above appointment at a salary in accordance with Grade A.P.T. III (£500 × £15—£545 per annum) plus London Weighting.

Form of application (which must be returned not later than May 12, 1952) and details of the duties of the post may be obtained from the undersigned.

R. H. BUCKLEY,
Acting Town Clerk.

Town Hall,
East Ham, E.6.

URBAN DISTRICT OF HERNE BAY

Appointment of Legal Clerk

APPLICATIONS are invited for the above appointment in the Clerk and Solicitor's Department at a salary in accordance with Grades A.P.T. III/IV (£500 × £15—£575).

Candidates should have a good knowledge of conveyancing and general legal work. The successful applicant will also be required to undertake such other general duties as may be assigned to him.

Local government experience is desirable but by no means essential.

Forms of application may be obtained from the Clerk of the Council, Council Offices, Herne Bay, and they must be returned to him not later than May 20, 1952.

CITY OF BIRMINGHAM

Assistant Town Clerk

APPLICATIONS are invited for appointment as Assistant Town Clerk of Birmingham, the present holder of the post now offered having been appointed to an important office in another large city.

The successful applicant will be entrusted with considerable responsibility for a wide range of legal and administrative work in the Town Clerk's Department. Applicants must therefore be solicitors having extensive experience of local government law and administration and a wide general interest in local government affairs.

Salary £1,750 × £100—£2,150. Pension scheme, medical examination. Applications, with copies of three recent testimonials to Town Clerk, Council House, Birmingham, by May 28, 1952. Canvassing disqualifies.

GREAT OUSE RIVER BOARD

Appointment of (1) Deputy Clerk
(2) Assistant Solicitor

APPLICATIONS are invited from solicitors for the above appointments :

(1) *Deputy Clerk*. Salary £1,250 to £1,500 according to experience and qualifications.
(2) *Assistant Solicitor*. Salary in Grade VIII of the A.P. & T. Division of the National Conditions, according to experience and qualifications.

Candidates for Deputy Clerk should have local government experience.

Applications, stating age, qualifications, experience and present appointment, salary and notice required, together with the names of two persons to whom reference may be made, must reach the Clerk of the Board, Elmhurst, Brooklands Avenue, Cambridge, by May 17, 1952.

BOROUGH OF WISBECH

Appointment of Town Clerk and Chief Financial Officer

APPLICATIONS are invited from solicitors under 50 years of age with wide municipal experience for the whole-time appointment of Town Clerk, Solicitor, Chief Financial Officer, etc., to the corporation.

The salary will commence at £1,100 per annum and proceed by annual increments of £50 to a maximum of £1,300 per annum.

The appointment is whole-time and will be terminable by three months' notice on either side.

The successful applicant will be required also to act as Clerk of the Burial Board, Clerk to the Pilotage Authority, Local Fuel Overseer, Clerk to the Port Health Authority, and such other appointments as are normally held by the Town Clerk and Chief Financial Officer of a borough and will be required to pay any emoluments, fees or salaries receivable in respect of those or any other appointments (except the two following) into the corporation's account.

The present Town Clerk is also Superintendent Registrar of the Wisbech district and, if the successful applicant is appointed Superintendent Registrar by the Isle of Ely County Council, the net salary payable in respect of that appointment shall be retainable by him, subject to a reasonable arrangement with regard to any administrative expenses falling on the corporation. Subject also to the payment of any necessary superannuation costs, any fees payable in respect of the Registration of Electors may also be retained by the successful applicant.

The appointment will be subject to the provisions of the Local Government Superannuation Act, 1937, and to satisfactory medical examination.

Applications, giving particulars of age, qualifications, experience, previous and present appointments, and the names and addresses of three referees must be delivered to the undersigned not later than the 17th day of May, 1952.

Applicants must state whether to their knowledge they are related to any member or senior officer of the Council. Canvassing will disqualify.

J. E. SIDDALL,
Town Clerk.

Town Hall,
Wisbech.
April 25, 1952.

Justice of the Peace
and
Local Government Review
[ESTABLISHED 1837.]

VOL. CXVI. No. 18. LONDON: SATURDAY, MAY 3, 1952 Price 2s. 3d. (Including Reports)
Pages 271-286 Offices: LITTLE LONDON, CHICHESTER, SUSSEX. [Registered at the General Post Office as a Newspaper] Price 1s. 3d. (without Reports)

NOTES of the WEEK

Re-opening the Case

It is sometimes a matter of difficulty for justices to decide whether they ought to allow a case once closed to be re-opened for the purpose of the calling of additional evidence. It is easy to say that if the evidence is really material and is likely to help the court to arrive at the truth, such evidence should be admitted; but there is another side to the question, for it is the duty of the prosecution to prove the case, and it creates difficulty and probably dissatisfaction if magistrates allow the prosecution to fill in gaps in the evidence after a case has been closed. The omission of some mere formality may often be quite properly remedied by re-opening the case, but it is a different proposition when evidence of fact, which could have been produced earlier, is tendered after the prosecution has been closed and the defence has been opened.

In a trial by jury the position is even more difficult, as a recent appeal from Assizes shows.

In *R.* v. *Owen* (*The Times*, April 8) the Court of Criminal Appeal quashed a conviction in the following circumstances. After the jury had retired they put a question to the learned judge which he considered to be of vital relevance and which could have been dealt with by evidence on the part of the prosecution. A witness was accordingly recalled and gave further evidence and after a short retirement the jury brought in a verdict of guilty.

In delivering the judgment of the Court of Criminal Appeal, the Lord Chief Justice said they did not desire to limit the discretion of a judge to admit further evidence after the case for the defence had been closed where it was in rebuttal of matters raised for the first time by the defence. It was, however, different when the whole case had been concluded and all that remained was for the jury to return their verdict. In the present case the evidence admitted was not by way of rebuttal of any matter set up by the defendant. The theory of our law was that he who affirmed must prove, and therefore it was for the prosecutor to prove his case; if there were some matter which the prosecution might have proved but had not, it was too late, after the summing up, to allow further evidence to be given. The jury had asked a most pertinent question but they should have been told that the prosecution had laid before them such evidence as they had thought fit, and the evidence could not be re-opened. The court laid it down that once the summing-up was concluded no further evidence ought to be given.

The right to call rebutting evidence is recognized in s. 13 of the Summary Jurisdiction Act, 1848, but it is obviously a matter for the discretion of the justices to decide what really is rebutting evidence as distinguished from evidence which should have been called as part of the case for the prosecution before the case for the defence was open.

Drunk in Charge of a Car

A recent Scottish case as to an alleged offence against s. 15 of the Road Traffic Act, 1930, *Dean* v. *Wishart* (1952) Sc.L.T. Rep. 86, is worth noting. A defendant appealed to the High Court of Justiciary against his conviction. The appellant who had been convicted under s. 15, was said to have become incapably drunk, whereupon his friends put him in the back seat of his car in a car park, and removed the rotor arm to immobilize the car. The conviction was quashed.

Bastardy Proceedings and the Isle of Man

The repeal of s. 6 of the Summary Jurisdiction (Process) Act, 1881, effected by s. 30 (1) of the Maintenance Orders Act, 1950, has an unexpected consequence in its effect on the Summary Jurisdiction Process (Isle of Man) Order, 1928. That Order, it will be recalled, was made under s. 40 (2) of the Criminal Justice Administration Act, 1914, and it extended the operation of the Act of 1881 so that its provisions applied as between England and the Isle of Man, subject to the adaptations set out in the schedule to the order. Section 6 of the Act of 1881 was referred to in the schedule and the effect of the order, so far as bastardy proceedings were concerned, was, among other things, to give a court of summary jurisdiction in England and the court of the high bailiff in the Isle of Man jurisdiction to deal with persons residing in the jurisdiction although ordinarily resident in the Isle of Man or England respectively, and to execute process issued to enforce obedience to an order made in either part. The repeal of s. 6 brings to an end this arrangement with the result that, *inter alia*, it would appear to be no longer possible to enforce an English bastardy order in the Isle of Man, or to make an order in England against a person who is ordinarily resident in that island.

The remaining provisions of the Summary Jurisdiction (Process) Act, 1881, are concerned with process issued under the Summary Jurisdiction Acts and they will continue to apply to the Isle of Man.

Juvenile Courts Constitution

The Juvenile Courts (Constitution) Rules, 1952 (S.I. No. 553 (L.3)) which came into operation on March 20, will be found useful where there has hitherto been some difficulty in finding a sufficient number of suitable justices to form a panel from among those acting for the petty sessional division in question. The new rules enable the justices in such cases to appoint members to the panel from other petty sessional divisions of the county, not being a borough having a separate commission of the peace.

Speed Limit of a Utility Vehicle

At 115 J.P.N. 758 we discussed in an article the effect of the Motor Vehicles (Variation of Speed Limit) Regulations, 1950. We came to the conclusion that if a goods vehicle is being used for a purpose for which it can lawfully be used without the authority of a licence under the Road and Rail Traffic Act, 1933, then, even though it is licensed under that Act, it is not subject on a de-restricted road to any speed limit.

We see in *The Times* for April 25 on p. 4 a report of a case (which is to be reported in full in *The Times Law Reports* under the name *Blenkin* v. *Bell*) in which the Divisional Court held that a Lea Francis utility shooting brake licensed with a private carriers' C licence under the 1933 Act, was *not* subject to a 30 *m.p.h.* speed limit on a de-restricted road when it was being used as a private car for carrying passengers and not for the carriage of goods.

It is stated in the report that the court decided the point on the basis that the vehicle was a shooting brake or utility vehicle which could be described as a goods vehicle and held that, if such a vehicle with a C licence was not being used as a goods vehicle, the conditions imposed upon goods vehicles should not apply while it was being used for a purpose for which it could lawfully be used without a C licence.

The Lord Chief Justice, giving judgment, said it was a satisfying construction to place on the statutory provisions and regulations. It was consistent with reason and with common sense that if a vehicle was used to carry goods other than passengers' luggage it was subject to the speed limit, but if not the limit did not arise. The justices having found that at the material time the vehicle was not being used to carry goods had come to the right decision, and were to be congratulated on finding their way through the tangled mass of regulations.

It is satisfactory to find that the view we took of this somewhat difficult point has been found by the High Court to be the correct one, and we await with interest the full report of the case. It came before the court by case stated, the prosecutor appealing against the justices' decision to acquit.

Cruelty to Children

The debate in the House of Lords on March 25 arising out of a motion proposed by Lord Strabolgi on the subject of cruelty to children should help to clear the minds of many people who are not only disquieted by the continued prevalence of this type of offence, but also perplexed as to its actual extent.

The Lord Chief Justice pointed out that offences of this kind committed in the privacy of the home may remain unknown to the police, and therefore it is not possible to obtain the kind of statistical information that can be procured about such offences as murder, rape or housebreaking. It is therefore difficult to know to what extent, if any, there has been an actual increase. Lord Goddard recognized that an increase in prosecutions was all to the good, but he doubted whether conditions were as bad as they were (for instance) when Dickens wrote *Oliver Twist*. He deprecated a suggestion that inspectors of a voluntary society should have a right of entry into people's houses, a right which is not possessed by police officers in such cases.

Admitting that some of the penalties imposed were inadequate, the Lord Chief Justice said that the law as it stands is perfectly adequate to deal with these cases. "What is needed," he proceeded, "is a further application of the law and the impressing upon magistrates from time to time of the fact that they ought not to deal with cases summarily merely because they have the power to deal with them in that way." Lord Goddard drew attention to the power of the justices to decide to commit a case for trial even after, at the request of the prosecution, they have begun the hearing as a summary procedure, and expressed his view that magistrates ought to be more ready to commit cases for trial. Further, many cases brought under the Children and Young Persons Act, 1933, could more properly be brought under the Offences against the Person Act, 1861, which provides heavy penalties in respect of various crimes. "If magistrates will make freer use of their powers, and if prosecutors will consider putting forward different charges, more serious charges, more appropriate charges, when serious crimes are committed against children, a great deal of the agitation in the public mind upon this subject will, I believe, be found to die down, and people will be satisfied."

The Lord Chancellor associated himself with the observations of the Lord Chief Justice as to the desirability of committing serious cases for trial, and added that he understood that the Home Office took the same view.

These are weighty pronouncements, and it is earnestly to be hoped that magistrates will not hesitate about refusing to try summarily cases of cruelty of a gross nature. Cases of neglect due in the main to ignorance are in a different category, and many of these may quite properly be dealt with in the magistrates' courts.

The Question of Bail

An important matter to be decided where the defendant is committed for trial upon a charge of cruelty is that of the grant of bail. Present policy rightly favours the release on bail of an accused person who may otherwise have to remain in custody for some considerable time. That, however, must always be subject to the interests of justice and, in certain types of case to the safety of other persons concerned. The Lord Chief Justice gave guidance to magistrates which they will do well to follow. After referring to possible delay and trouble involved in a committal for trial, he went on: "It may be, too, that very often it would not be right to let the defendant out on bail, because he might go back to the same household as the child—assuming that the child had not been removed to a place of safety. In those circumstances, it would be very dangerous to allow bail."

North Riding Probation Report

Much after-care work in the case of persons released from prison or borstal now falls upon probation officers, who generally welcome it in spite of its difficulties and sometimes discouragements. The position as to after-care in approved school cases is not everywhere the same, and apparently opinions still differ on the point whether the approved school authorities should make themselves responsible for after-care or should arrange with probation officers for them to do it.

In the report of the principal probation officer for the North Riding of Yorkshire Probation Area it is stated that some approved schools fail to use the country's probation service for after-care work with their cases and that while in the North Riding the probation officers do after-care work for some schools, other approved schools try to carry out their own after-care or seek to use another department of the county council's staff. Mr. Sendall evidently thinks it better that probation officers should undertake the work, as he writes: "Where the schools attempt to do after-care there must be considerable journeying by their representatives and inevitably there must be a time gap between one visit and the next. If another department of

the county council be used for after-care then the Riding will have to pay for considerable journeying from Northallerton whereas the probation staff are centred in the areas of greatest population in the Riding and after-care work can be done as frequently as necessary and without the expense of motor journeys."

The report laments the "shocking" prevalence of offences of dishonesty involving what is commonly called thieving. It is pointed out that the increase in this type of offence is in the urban part of the Riding, the rural portions having remained steady, and there being many villages in which there have been no juvenile offenders for the past nine years.

"To state the obvious, the problem of juvenile crime is an urban one.

"There is no need to seek through statistics or special inquiries for the causes of urban delinquency . . . Parental guidance, care, and discipline seem to be disappearing from many working class homes. If the parents had the will and desire that their children should behave in good social ways the figure of youthful crime could be brought down very considerably . . . The State is the provider of so much that it has cut away a good deal of working class parental responsibility."

Fortunately, there is some comfort in the fact that out of every 100 juveniles placed on probation in the Riding eighty-eight do not come again before the courts.

Delegation to Sub-committee

A learned correspondent, referring to our article "Power to Prosecute" at p. 183, *ante*, doubts the validity of our opinion that "The council can, while delegating its general functions under a particular Act to one of its main committees, specifically authorize that main committee to delegate further the power of selecting cases for prosecution. If the main committee is thus authorized by the parent local authority to sub-delegate, the maxim *delegatus non potest delegare* will not apply."

If, says he, the council has this power, why did Parliament enact, in the Town and Country Planning Act, 1947, sch. 1, Part 2, para. 5 (*b*), and the National Assistance Act, 1948, sch. 3, Part 1, para. 5 (2), that the committee may authorize a sub-committee to exercise on their behalf any function of the committee? (The order of words differs in the two enactments, but not materially.) In each enactment, the power of sub-delegation given to the committee is subject to any restrictions imposed by the council. We shall have more to say, we hope, in two or three weeks time upon the general subject of our article, from which the above passage is quoted. Meanwhile, the reason of the two enactments mentioned by our correspondent is, in our opinion, that although local authorities, on our view of the law as expressed in that article, could have produced the same result, they might not have done so, and Parliament thought it was a result worth producing. It did not desire to confer powers by direct enactment upon sub-committees as it had done in isolated instances in earlier legislation of which guardians' committees are the best known, nor did it intend the main committee set up by these two Acts to be able to delegate to sub-committees against the wish of their councils: the council was to retain ultimate control. But it regarded sub-delegation, to some limited extent, as being normally proper, and therefore authorized it, except where the council restricted it, instead of leaving the council to authorize it in every case. The effect of the two enactments can be stated in alternative nutshells: that they shift the burden of proof; that they save the council trouble if the council agrees with the view taken by Parliament; or that they guard against oversight or indifference, by securing that a certain position will arise unless the council takes some step to prevent it.

A Slight Sight of Site Rating

Further disturbance of the already troubled waters in which the basis of assessment to local rates is wallowing would be obviated by adoption of the view of a majority of the inter-departmental committee on the rating of site values that there are more reasons against than for site value rating. With the revaluation contemplated by the Local Government Act, 1948, still floundering in heavy weather after much expenditure of money and manpower, "administrative difficulties" visualized by the committee as likely to arise in connexion with a new and, in this country, untried basis for levy of local revenues, scarcely need mention as a potent objection. Inability of the successors of local authorities in the rating valuation field to handle old problems that they wot of with celerity and good effect must of necessity raise much trepidation about problems that they wot not of in a new sphere.

Since the Town and Country Planning Act, 1947, virtually extinguished the unearned increment of value often gained by the owner of undeveloped, or under-developed, land, a frequent argument of proponents of site value rating has been diminished in so far as it cannot now be an annual tax on capital profit accruing to a speculative landowner withholding land from full use in a developing area. Doubtless, a site rate on unrestricted value, as distinguished from that for existing use, would push some owners out of diseconomy in the use of land induced by loss of development value under the Act of 1947. Here, however, is one way in which "administrative difficulties" would loom large; one can readily imagine the addition of "hypothetical development" to jargon already over-run with a good deal of hypothesis, and tremendous flights of litigious imagination about all manner of uses to which a site could be put and its value if so used. The minority view that a site rate should be paid by the Crown on the difference between the restricted and unrestricted value would, if adopted, also be a prolific source of administrative effort in ascertainment and collection.

Disappointing as the result of the committee's deliberations must be to local authorities hoping for an extension of rateable capacity, they will mostly agree with a majority of the committee that the only appreciable effect of a site value rate would be to redistribute the rating burden, conferring an advantage on residential property and suburban areas at the expense of commercial property and the centres of towns. Some authorities may think that an alteration of incidence in the manner indicated would be equitable, on the grounds that this would reflect relatively heavier expenditure borne by rates for police and fire protection of commercial premises and road and traffic facilities for commercial transport, while others may regard the large slice of local revenues absorbed by education, public health, housing and other more or less personal services as sufficient reason for leaving the incidence as it is. Actually, the shift of incidence following site value rating would be far more subtle than the initial impact of payments. Some of the charges would stick where they fell, reducing net income and national tax revenue, while others, especially where levied on an undertaking of a monopolistic character, would tend to be transmitted in higher prices to consumers, many of whom would merely be bearing in one direction expense from which they had been relieved in another, though usually in differing proportions. In present circumstances, site value rating appears to have more emotional appeal than economic advantage and to be several straws beyond the last which the valuation camel can bear.

MAINTENANCE DURING DIVORCE PROCEEDINGS

By LORD MESTON, *Barrister-at-Law*

It is essential that there should not be any conflict of jurisdiction between the Divorce Division of the High Court of Justice and the magistrates' court in regard to maintenance orders made in favour of married women. The possibility of such a conflict arising has in recent years been the subject of some decisions which are interesting to note. In *Pooley* v. *Pooley* [1952] 1 All E.R. 395; 116 J.P. 108, a maintenance order had been made in the magistrates' court on November 26, 1946, in favour of a wife. In 1951, the wife presented a petition for divorce against her husband alleging that he had deserted her for a period of three years, in which petition was included a prayer for *alimony pendente lite*. As the wife could not have an order in the High Court for *alimony pendente lite* and a maintenance order in the magistrates' court in force at the same time, the wife, on September 27, 1951, applied to the stipendiary magistrate for the petty sessional division of Leeds for the revocation of the maintenance order which had been made in her favour on November 26, 1946. The magistrate dismissed the wife's application because he did not think that he had jurisdiction to adjudicate on the matter while proceedings were pending in the High Court. On appeal by the wife, the Divisional Court (Lord Merriman, P., and Karminski, J.) allowed the appeal and ordered that the original maintenance order should be discharged. As Lord Merriman, P., pointed out in the course of his judgment there was in this case no conflict of jurisdiction at all. In truth and reality the wife's application to the magistrates' court was made to ensure that there would be no overlap between the two jurisdictions.

It will be observed that in *Pooley* v. *Pooley*, *supra*, the wife's application was to discharge an order for maintenance already made in the magistrates' court in her favour *before* the date when she filed a petition in the High Court. It was not an application to obtain a maintenance order in the magistrates' court *after* proceedings had been commenced in the High Court. However, the latter point is well covered by authority. In *Craxton* v. *Craxton* (1907) 71 J.P. 399, the facts were that in October, 1906, a husband filed a petition for divorce and an order was made for a weekly payment of alimony to the wife *pendente lite*. On April 15, 1907, a summons was taken out by the wife under s. 4 of the Summary Jurisdiction (Married Women) Act, 1895, on the ground that the husband had from January 7, 1907, deserted her. The justices made an order in favour of the wife dated April 22, 1907, for separation and maintenance. It was held by the Divisional Court (Bucknill and Bargrave Deane, JJ.) that, as the divorce suit was still pending, there could be no desertion and the justices had no jurisdiction to make the order. Whatever may have been the actual ground of the decision in *Craxton* v. *Craxton*, *supra*, it was not fully appreciated until the case of *Higgs* v. *Higgs* (1935) 98 J.P. 443, that during the pending of a divorce petition no order for maintenance should be made under the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1925, by a court of summary jurisdiction. In that case the facts were that on September 22, 1933, the respondent wife was alleged to have committed an act of adultery upon which the husband on October 6, 1933, filed a petition for dissolution of marriage which was still pending. Meanwhile on September 25, 1933, the wife took out a summons under the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1925, alleging the wilful neglect of the husband to maintain her, the wilful neglect consisting of his leaving her on September 23, 1933, on his discovery of the alleged act of adultery. For various reasons considerable delay occurred in the prosecution of the divorce petition of the husband which had not yet been heard. Likewise, principally owing to the non-appearance of the husband at the hearing of the summons by the wife, the summons was adjourned several times, and the magistrate eventually made an order on May 21, 1934, that the husband had wilfully neglected to maintain his wife and should pay her a weekly sum of 17*s.* 6*d.* by way of maintenance. The husband then appealed to the Divisional Court on the ground that the magistrate had no jurisdiction to make the order because a petition was pending in the High Court to dissolve the marriage of the parties. The Divisional Court (Sir Boyd Merriman, P., and Langton, J.) allowed the appeal and discharged the magistrates' order, laying down the rule that during the pendency of a petition for divorce in the High Court no order for maintenance should be made under the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1925, by a court of summary jurisdiction. The Divisional Court pointed out that although the power of the High Court to make provision for a wife is not an exclusive power, there is an obvious inconvenience in holding that there is a concurrent jurisdiction in the High Court and in justices in the matter of ordering a provision for a wife to be made by her husband if proceedings in the Divorce Division are on foot. The above reasoning of the Divisional Court was adopted in *Knott* v. *Knott* (1935) 99 J.P. 329, where the point in issue was adultery. The wife on July 20, 1931, obtained an order under the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1925, in the magistrates' court for the payment by her husband of 30*s.* per week for herself and 10*s.* each for two children on the ground of desertion. On February 26, 1935, the wife filed a petition in the High Court seeking dissolution of the marriage on the ground of adultery of the husband. The adultery alleged was from August, 1931, onwards. The husband later took out a summons to discharge the aforesaid order of July 20, 1931, on the ground that since the date of that order the wife herself had committed adultery, and, after two adjournments, this summons came on for hearing before the court of summary jurisdiction on March 5, 1935. The wife's petition (filed on February 26, 1935) for divorce on the ground of her husband's adultery was not served until March 6, 1935, after the hearing of the husband's summons to discharge the order for maintenance. On March 5, 1935, when the husband's summons was heard there were considerable arrears of the maintenance due under the original order of July 20, 1931. On the hearing of that summons by the magistrates' court objection to the jurisdiction was taken on behalf of the wife on the ground of the pending petition in the High Court. The magistrates' court overruled this objection, received evidence of the adultery of the wife, and gave consideration to the question whether the fact of there being arrears in the payment of maintenance constituted conduct of the husband conducing to adultery. In the result the adultery of the wife was established and the order for maintenance of July 20, 1931, was discharged. The wife appealed from this decision to the Divisional Court, and the substantial ground of appeal was that the magistrates' court had no jurisdiction. When the appeal came before the Divisional Court (Sir Boyd Merriman, P., and

Bucknill, J.), the learned President stated the issue in the case in these words (at pp. 161, 162): "Where there is a charge of adultery made in a court of summary jurisdiction and at the same time the High Court is seised, either directly or by necessary implication of that issue, have or have not the justices jurisdiction to decide the issue of adultery so long as a suit in which that issue is raised is pending in the High Court? The Divisional Court held that the justices had no such jurisdiction and that in the present case the finding of the justices should be set aside and that the matter should be remitted to them for re-hearing, but that such hearing should be stayed until the determination of the issue of the wife's adultery by the High Court."

An unusual and different point arose for consideration in *Klosser* v. *Klosser* [1945] 2 All E.R. 708, where it was clearly stated that the jurisdiction of justices' courts is based on residence and not on the domicil of the parties. On June 6, 1945, the husband, whose domicil of origin was South Africa, presented a petition *ex parte*, in accordance with the rules of the court, for leave to sue in the appropriate court in South Africa for restitution of conjugal rights or a decree of divorce on the ground of desertion. This was followed the next day by a document known as an "intendit," which set out that the husband had presented a preliminary application for divorce proceedings to be instituted in South Africa, and, for this purpose, a summons was accordingly issued to the wife on July 10, 1945. In complete ignorance of the fact that these divorce proceedings were pending, the wife took out, in England, a summons on June 8, 1945, under s. 4 of the Summary Jurisdiction (Married Women) Act, 1895, on the ground that her husband had unlawfully deserted her. On July 26, 1945, the wife was served with the South African proceedings, and on the next day, namely, July 27, 1945, her summons came on for determination before the justices. The husband did not appear on that occasion, and the wife drew the attention of the justices to the existence of the suit pending in South Africa. The justices refused to make any order on the ground that they had no jurisdiction to entertain the summons. On appeal by the wife, the Divisional Court (Lord Merriman, P., and Hodson, J.) held that the justices had jurisdiction to hear and determine the wife's summons. The statutory jurisdiction given by the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1925, does not depend upon the domicil of the parties but upon residence. However, as Lord Merriman, P., pointed out, the real difficulty in this case was what should be done after the restoration of the matter to the cognizance of the justices. The learned President said that he did not propose to make an order, which would either compel the justices to hear or not hear the summons. He proposed to leave it to their discretion and good sense, and expressed the view that before the justices should decide to go on and hear the summons they ought to take, and the wife through her solicitors ought to take, every means to ensure that the husband had a full opportunity of considering what might be the more than usually serious consequences of a decision against him or the advantage of a decision in his favour. Accordingly the wife's appeal was allowed, and the summons was restored to the justices.

In conclusion there are two other points which may be usefully noted. Section 10 of the Summary Jurisdiction (Married Women) Act, 1895, provides that: "If, in the opinion of a court of summary jurisdiction, the matters in question between the parties, or any of them, would be more conveniently dealt with by the High Court, the court of summary jurisdiction may refuse to make an order under this Act, and in such case no appeal shall lie from the decision of the court of summary jurisdiction! Provided always, that the High Court or a judge thereof shall have power by order in any proceeding in the High Court relating to or comprising the same subject matter as the application so refused as aforesaid, or any part thereof, to direct the Court of Summary Jurisdiction to rehear and determine the same." In *Perks* v. *Perks* (1946) 110 J.P. 94, the facts were that on September 24, 1943, the wife obtained from a magistrates' court an order under s. 4 of the Summary Jurisdiction (Married Women) Act, 1895, that she be no longer bound to cohabit with her husband on the ground of his persistent cruelty, the order conferring on her the legal custody of their infant son and an order for payment of 30*s.* a week for her maintenance and 10*s.* for the maintenance of the infant. On appeal the Divisional Court, by consent, struck out the separation order. They reduced the order for maintenance of the wife to 20*s.* and left the order for custody unaltered. On April 5, 1944, the husband applied to the magistrates' court to discharge the order for maintenance on the ground that since the making thereof he had made a *bona fide* offer to provide a home for his wife, and to resume cohabitation, which offer she had unreasonably refused. The stipendiary magistrate refused to deal with the application, because he took the view that it "would be more conveniently dealt with in the High Court" pursuant to s. 10 of the Summary Jurisdiction (Married Women) Act, 1895. On February 28, 1945, the husband issued in the Divorce Division an *ex parte* summons asking for directions how to proceed under s. 10, *supra*. On that summons the learned judge ordered that an originating summons be issued out of the Divorce Registry, and that the hearing was to be in open court, with oral evidence. The originating summons was issued, and on the hearing of it the learned judge discharged the order for maintenance. The wife appealed. The Court of Appeal (Lord Greene, M.R., du Parcq and Morton, L.JJ.) held that the learned judge of first instance had no jurisdiction to entertain the husband's application at all. Apart from the procedural irregularity of the application in the present case, it was held that a court of summary jurisdiction cannot under s. 10, *supra*, refuse to hear and determine on the ground that it "would be more conveniently dealt with in the High Court" a matter (such as an application for maintenance unaccompanied by any matrimonial relief) which the High Court has otherwise no jurisdiction to hear. As Lord Greene, M.R. pointed out in the course of his judgment (at page 6), the words in s. 10, *supra*, "more conveniently dealt with" alone clearly suggest that the Legislature was considering a case of concurrent jurisdiction and the question which was the more convenient forum. With regard to the more important matters there is concurrent jurisdiction, *i.e.*, separation orders and custody of children. Quite clearly, if the wife is asking for relief under either of those heads, that is a matter in respect of which the High Court has jurisdiction. This jurisdiction conferred on the magistrates (by s. 10, *supra*) is a collateral jurisdiction, and, therefore, the question becomes one of which is the more convenient forum. The whole language of s. 10, *supra*, contemplates a case of alternative fora, and the words "matters in question" mean the matters in question so far as those matters could, independently of s. 10, be brought before the High Court. A pure question of maintenance by itself never could be brought before the High Court by original application. In this connexion it should now be noted that s. 23 of the Matrimonial Causes Act, 1950, empowers the High Court to make orders for maintenance on the ground of wilful neglect to maintain. Such orders can be brought before the High Court on original application. Where the sole issue before the magistrates is one of wilful neglect to maintain, it now appears that the magistrates in such a case have jurisdiction under s. 10 of the Summary Jurisdiction (Married Women) Act, 1895, to refer the matter to the High Court. The other point worthy of note relates to the position of

a wife petitioner who has previously obtained an order for maintenance in the magistrates' court and who subsequently seeks to obtain an order for maintenance in the High Court after a decree absolute for divorce. In *Kilford* v. *Kilford* [1947] 2 All E.R. 381; 111 J.P. 495, on January 12, 1944, the wife obtained a maintenance order for £2 per week against her husband in a court of summary jurisdiction. She later obtained a decree absolute of divorce against her husband on January 13, 1947. She then applied for maintenance in the High Court, and in point of fact only asked for a nominal order. It was held by Barnard, J., that it would be most undesirable that there should be two orders for maintenance—even although one be only a nominal order—in favour of the same person in existence at the same time and that a wife petitioner, who has previously obtained an order from justices, must elect either to retain that order or to obtain an order of the Divorce Court.

"AND THE FLOODS CAME"

(St. Matthew, vii, 27)

By W. E. LISLE BENTHAM

Ever since (and, for all we know, even before) the days of Noah mankind has been troubled with the periodic flooding of land during and following heavy rainstorms. Water, like fire, is an element difficult to control and it cannot be said that the law has yet succeeded in devising any satisfactory code for the protection of the unfortunate victims of flooding which is in all respects, so to speak, watertight.

So far as the artificial accumulation of water is concerned, the law was sufficiently clearly annunciated in the leading case of *Rylands* v. *Fletcher* (1868) 33 J.P. 70. A person who without statutory authority for his own purposes brings on to his land or collects and keeps there anything likely to do mischief if it escapes, *e.g.*, a reservoir, must keep it in at his peril and otherwise is *prima facie* answerable for all the damage which is the natural consequence of its escape. In other words, he is an insurer and it is therefore unnecessary to prove that he was negligent and no defence for him to prove that he took all possible precautions to prevent the damage. But, as was pointed out by Lord Cairns in that case, this principle has no application to damage caused to one's neighbour by the natural or ordinary use of one's land. That is merely *damnum absque injuria* for which there is no legal remedy. The working of mines in the ordinary course of mining is a natural use of land and consequently damage caused by the percolation of water by gravitation arising from the tapping of a spring or the accumulation of waste water or even from pumping operations during such working gives no cause of action: *Smith* v. *Kendrick* (1849) 7 C.B. 515; *Baird* v. *Williamson* (1863) 15 C.B. (N.S.) 376; *Wilson* v. *Waddell* (1876) 42 J.P. 116.

The position with regard to flood waters from a surcharged sewer and the duty of the local authority under s. 14 of the Public Health Act, 1936, to provide such public sewers as may be necessary for effectually draining its district were dealt with in an article by "Ephesus" in 115 J.P.N. 39, but it should be added that, as regards the Metropolis, the corresponding provision is contained in s. 17 of the Public Health (London) Act, 1936, and that Act contains no provision for compensation to persons sustaining damage by reason of the failure of the local authority to carry out its statutory duty such as is to be found in or inferred from decisions relating to s. 278 of the general Act of 1936. Accordingly, in London, the remedy is by way of application for an order of *mandamus*: *R.* v. *St. Giles', Camberwell, Vestry* (1897) 61 J.P. 217; *Lee District Board* v. *London County Council* (1899) 64 J.P. 20, but the local authority has a discretion as to the time and manner in which the work is to be carried out: *R.* v. *St. Luke's, Chelsea, Vestry* (1862) 28 J.P. 85.

In certain circumstances a natural stream may become in law a public sewer, either (*a*) by statute, *e.g.*, the River Wandle which is vested in the London County Council as such (Metropolis Management Act, 1855, s. 135 and sch. D) or (*b*) by the reception of the surface water drainage of buildings: *Falconar* v. *South Shields Corporation* (1895) 11 T.L.R. 223, although not by the reception of soil water sewage: *George Legge & Son, Ltd.* v. *Wenlock Corporation* [1938] 1 All E.R. 37; 102 J.P. 93. Whether or not it has become a sewer is in each case a question of fact and largely one of degree: *Newcastle-upon-Tyne Corporation* v. *Houseman* (1898) 63 J.P. 85.

One of the chief causes of flooding is the overflowing of rivers, streams, and other natural watercourses. In general, it may be said that it is for every riparian owner to do what he can to protect his land against such flooding, but in so doing, if his sole purpose is the protection of his own property as distinct from warding off a common danger, he is not entitled to send the flood-water on to his neighbour's land: *Whalley* v. *Lancashire & Yorkshire Railway Co.* (1884) 48 J.P. 500; *Farquharson* v. *Farquharson* (1741) cited in 3 Bli. (N.S.) at p. 421, H.L.; *Gerrard* v. *Crowe* [1921] 1 A.C. 395, P.C.; 90 L.J. (P.C.) 42.

Statutory powers have been conferred from time to time as respects certain rivers. For instance, the River Thames is controlled, as regards the section from Cricklade in Wiltshire to a point some two hundred yards below Teddington Lock by the Thames Conservancy Board (Thames Conservancy Acts, 1864 to 1950) and thence to its mouth by the Port of London Authority (Port of London Acts, 1908 and 1920); but the responsibility for the prevention of flooding of the Thames within the County of London is that of the London County Council in general, the Corporation of London and the metropolitan borough councils and private owners being responsible as regards riparian land vested in them respectively (Thames River (Prevention of Floods) Acts, 1879 to 1929). Certain rivers outside the County of London, other than the River Lee, are regulated by catchment boards set up for the catchment areas specified in Part I of sch. I to the Land Drainage Act, 1930, to which other areas have been added by orders made under s. 2 (2) thereof. The River Boards Act, 1948, however, which was passed with the object of establishing a unified system of control over the rivers of England and Wales, provides for the prospective transfer of the functions of catchment boards to river boards constituted under that Act, who are empowered to control the areas defined by order under s. 1 thereof. Apart from the control of hatches and the like, one important and useful power conferred upon catchment boards, and therefore prospectively upon river boards, is that under s. 57 of the 1930 Act to require occupiers of riparian land to maintain the banks and cleanse or scour the channels of watercourses so as to promote their free and unobstructed flow.

A good illustration of the problems which arise from the overflowing of natural watercourses is afforded by the case of a certain river which with its tributaries rises in the Home Counties and flows through several metropolitan boroughs

into the Thames. In times of abnormally heavy rainfall such as freak thunderstorms this river, particularly in its middle and lower reaches, periodically overflows and causes discomfort and damage to the owners and occupiers of property situate on its banks. Some riparian owners have from time to time accordingly gone to great expense in culverting certain sections of the river. In doing so they appear to be under an obligation to ensure that the work does not form an obstruction to the natural flow and to be liable for damage to adjoining land through flooding caused by the obstruction (*see Sedleigh-Denfield* v. *O'Callagan* [1940] 3 All E.R. 349, a case in which the mouth of a culvert had become choked with debris), but, apart from obstruction, it does not follow that the culvert provided must be large enough to take abnormal flows, though normality might be difficult to define, nor that they can be held responsible if the culverting causes a greater risk of flooding elsewhere in the open sections of the watercourse. Housing development is a contributing factor to the flooding, for it tends to increase the burden on the streams, both because more household rain and waste water is discharged into them and also because paved streets prevent rain falling on their surface from being absorbed naturally by the ground.

In such circumstances it is understandable that riparian owners should look to their respective local authorities to deal with this ever present menace. There is, however, doubt as to whether the river in question is vested in the various local authorities as a sewer and, whether or not it is so vested, as to the duties and powers of such authorities so far as flood prevention is concerned. Whilst each authority is under the statutory duty of making and maintaining such sewers as are necessary for the effective draining of its own district, *lex non cogit ad impossibilia* is a maxim of especial force in considering the duties imposed on a public authority. Such cases as *Hammond* v. *St. Pancras Vestry* (1874) 38 J.P. 456, and *Stretton's Derby Brewery Co.* v. *Derby Corporation* (1894) 69 L.T. 791 show that the duty of such a body is only to use reasonable care and diligence in the performance of a statutory duty. The duties referred to in s. 23 of the Public Health Act, 1936, and s. 17 of the London Act have no meaning when applied to a river, for the local authority can scarcely "repair" or "maintain" or "empty" a natural stream and certainly cannot "discontinue" it, so that it seems that such provisions clearly refer only to an artificial sewer constructed to take drainage arising in its own district; nor can there be any obligation to cater for water flowing into that district from the districts of other authorities higher upstream. Indeed, it would appear that, so far as the metropolitan borough councils are concerned, they are but sanitary, and not drainage authorities. Much less are they flood protection authorities and in so far as the river in question may be vested in them, even supposing it to be a sewer, by analogy with the vesting of a highway, they would seem to have only such property in and powers over this river, its bed and banks, as will enable them to perform their statutory duties, or to exercise their statutory powers: *cf. Rolls* v. *Vestry of St. George the Martyr, Southwark* (1880) 44 J.P. 680; 14 Ch. D. 785, *per* James, L.J., at p. 796 of the latter report. Thus they can and do periodically cleanse this river and its tributaries, and s. 18 of the London Act enables them to enlarge or otherwise improve or alter any watercourse vested in them. These, however, can only be considered as stop-gap measures of amelioration, for the main problem is one which cannot be solved by piecemeal methods. What is really needed is a comprehensive scheme of flood prevention for the whole watershed, but the matter is complicated by the difference in the law applicable to the Metropolis from that applicable to the rest of the country, so that it would entail either fresh legislative powers, or at least the extension of the river board plan to a portion of the County of London under the provisions of s. 7 of the 1948 Act. In any case, the necessary flood protection works would obviously be extremely costly and beyond the financial resources of the various constituent local authorities without the aid of an exchequer grant and it is manifest that a scheme of this magnitude could not be entertained during the present period of financial stringency, although it is understood that some preliminary research has already been carried out with a view to measuring the extent of the task.

The question of the flooding of watercourses is closely linked with that of the pollution of streams and rivers, which is not only beyond the scope of this article but has already been considered in a recent article at p. 69 of the present volume. From this it is satisfactory to learn that the provisions of the Rivers (Prevention of Pollution) Act, 1951, have been made to apply to those areas (including the County of London) which were excluded from the purview of the River Boards Act, 1948.

WEEKLY NOTES OF CASES

QUEEN'S BENCH DIVISION

(Before Lord Goddard, C.J., Ormerod and Parker, JJ.)

R. *v.* KENT JUSTICES: *Ex parte* MACHIN.
April 7, 1952

Justices—Trial of indictable offence—Prisoner not informed of liability to be committed to quarter sessions for sentence—Convictions quashed—Summary Jurisdiction Act, 1879 (42 *and* 43 *Vict., c.* 49), *s.* 17 (2) *and Criminal Justice Act*, 1925 (15 *and* 16 *Geo. 5, c.* 86), *s.* 24 (2), *as amended by Criminal Justice Act*, 1948 (11 *and* 12 *Geo. 6, c.* 58), *s.* 79, *sch.* IX.

APPLICATION for order of *certiorari*.

The applicant, Machin, appeared before a court of summary jurisdiction for the St. Augustine's division of Kent on charges of obtaining credit by false pretences and larceny. He was told by the clerk to the magistrates of his right to trial by jury and consented to be dealt with summarily. He was not, however, told of his liability to be committed to quarter sessions for sentence under s. 29 (1) of the Criminal Justice Act, 1948, if the magistrates, after conviction, on obtaining information as to his character and antecedents, should be of opinion that their powers of punishment were inadequate. The magistrates, having convicted on both charges, heard evidence of the applicant's character and antecedents, and the applicant stated that he wished four outstanding offences to be taken into consideration. The magistrates then committed the applicant to East Kent Quarter Sessions for sentence. The applicant applied for leave to apply for an order of *certiorari* to quash the convictions on the ground of irregularity in procedure, and quarter sessions, on being informed of this, postponed sentence.

Held, that, as the procedure established by the amendments in sch. IX to the Act of 1948 had not been strictly followed, the court, applying the principle of *R.* v. *Cockshott* (62 J.P. 325; [1898] 1 Q.B. 582), the convictions and committal were bad, and *certiorari* must issue to quash them.

Counsel: *Jupp* for the applicant; *Edie* for the respondent justices.

Solicitors: *Cunliffe and Airy*, for *H. W. S. Homewood*, Canterbury; *W. L. Platts*, Maidstone.

(Reported by T. R. Fitzwalter Butler, Barrister-at-Law.)

ADMISSION

This legal poet's apt to find
His Muse has moods that aren't kind
And when it's fertile doesn't stint
The kind of things he shouldn't print.

O fie for shame, you naughty Muse.
Who gives me rhymes I cannot use
And themes which I feel bound to say
Must never see the light of day.

J.P.C.

CHIEF CONSTABLES' ANNUAL REPORTS, 1951

10. NORWICH

The area of the city is 7,923 acres and the population 126,236. Authorized strength is 197 and at the end of the year there were four vacancies. Recruiting was good, for nineteen men and one woman were appointed out of ninety-five applicants; there were eleven resignations in 1951.

The Norwich Extension Act, 1950, came into operation on April 1, 1951, and increased the police district by about 240 acres. Nineteen houses have been built and occupied since the end of the war; during last year two houses were completed and occupied but twenty-four members of the force still need accommodation.

Special Constabulary strength stands at 116 on an establishment of 380 men and fourteen women. Eighty members have the Long Service Award and twenty-eight have earned the Long Service Medal for which they become eligible after nine years' service. Fifty men have been awarded the first Long Service Bar, and two a second bar to their medals, each of which represents an additional ten years' service.

Indictable offences totalled 1,018, that is twelve more than in 1950; sixty *per cent.* were detected. The value of the property involved was £12,060 of which £4,568 worth was recovered. There were, in addition, 100 juveniles dealt with for crimes committed, thirty-two less than in 1950.

Eight people were killed in road accidents and 262 were injured; in 1950 seven fatalities occurred and forty-four fewer were injured.

There are 413 licensed premises in Norwich and thirty-nine registered clubs. Fifty-seven men and four women were charged with drunkenness, an increase of thirteen men and one woman.

11. DERBY

The area of the county borough is 8,133 acres and the population 143,520. The authorized strength of the force is 219 and at the end of the year there were nine vacancies. During 1951 twelve recruits were engaged and the wastage was eighteen. The number of police houses now occupied is twenty-four.

Indictable offences numbered 1,656 against 979 in 1950 and 1,231 the year previous; fifty-eight *per cent.* were detected. The property involved amounted in value to £19,347 of which £5,320 worth was recovered. Crimes committed by juveniles increased from 149 in 1950 to 163 last year.

Road accidents caused eight deaths and injuries to 540 people, compared with seven and 470 in the year before.

There are 368 licensed premises and eighty-four registered clubs; 282 persons were charged with drunkenness, an increase of thirty-seven on the 1950 total.

12. HASTINGS

The area of the county borough is 7,315 acres and the population 65,000. The establishment of the force is 127 and the actual number engaged at the end of the year was 119. There are 164 male special constables and seven female; twenty-four men and two women were enrolled during the year. Altogether eighteen civilians are engaged with the force, whole and part-time.

Indictable offences totalled 714 against 584 in 1950, and the property involved amounted to £12,443 of which £2,718 worth was recovered. Sixty juveniles were dealt with for crimes.

There are 213 licensed premises and thirty-one registered clubs. Thirty-three people were charged with drunkenness, an increase of six.

Road accidents caused two deaths and injuries to 235 people; the year before there were two fatalities and 207 people injured.

13. NORTHAMPTON

The acreage of the borough is 6,201 acres and the population 105,490; the authorized strength of the force is 158 and at the end of last year there were twenty-two vacancies. In addition there are twenty-seven civilians engaged as clerks, motor engineers, canteen workers and cleaners. Altogether eight men left the service and twenty probationers were appointed; three men were promoted sergeants. During the financial year the net expenditure was £108,935 against £102,025 in 1950 and the Exchequer grant £52,513 compared with £49,507. There are now 111 ex-members of the force on the Pension List and twenty-two police widows.

Dealing with policewomen the report comments: "... The character of the work of the Department is gradually changing due largely to the development of the Social Services during the past three years, so that only a comparatively small proportion of welfare work now passes through police hands. It has, therefore, been possible to devote more of the time of the women police to matters of a police nature, such as uniform patrol, plain clothes observation, school duty and sharing in the work of other departments..."

Indictable crimes numbered 793 against 822 the year before, those detected totalled 497 and 508 respectively. Sixty juveniles were prosecuted, twenty-one less than the year before.

There are 371 licensed premises in Northampton and thirty-five registered clubs. Fifty-eight men and five women were charged with drunkenness, five less than in 1950. Six men were dealt with by the court for driving whilst drunk.

During the year there were 779 road accidents compared with 834 the year before; these caused six deaths and injuries to 300 people; in 1950 the numbers were seven and 342.

The establishment of special constabulary is 300 of which seventy-six have been recruited. The mobile section numbers forty-four. This report is well prepared and provides a first class survey of the year's activity of the force: Part I, Police Department; Part 2, Diseases of Animals Acts; Part 3, Registration and Licensing.

14. DEWSBURY

The area of the county borough is 6,720 acres and the population 53,476. Authorized establishment is ninety-one and the actual number engaged at the end of the year eighty-two; thirteen civilians work with the force. Appointments totalled thirteen and resignations eleven. Promotions were, one to sergeant and one to the rank of inspector. The strength of the special constabulary is seventy.

The total of indictable crimes was 1,026 against 511 in 1950; this rather startling increase is accounted for by two men who were responsible for 511 offences of false pretences. Seventy-seven *per cent.* were detected. Juveniles dealt with for crime were fifty-six against sixty-six in 1950.

Road accidents totalled 175 involving two deaths and injuries to 201 people; the year before three people were killed and 138 injured.

Licensed premises number 152 and there are forty-one registered clubs. Thirty-eight persons were charged with drunkenness against thirty-one in 1950.

"MY LEARNED FRIEND"

To think you merit such impressive phrase
From one who knew you in your student days.

J.P.C.

MISCELLANEOUS INFORMATION

THE ANNUAL GENERAL MEETING OF THE BAR

The Attorney-General (Sir Lionel Heald, Q.C.) presided at the Annual General Meeting of the Bar held in the Hall of the Middle Temple on Monday, April 21, 1952.

He said that it was almost impossible for a barrister to save and that a High Court Judgeship bade fair to become an expensive luxury.

A great deal had been achieved by the reorganized Bar Council during the last few years, but there was no ground for complacency about the present position and future prospects either of the Bar or any other of the professions.

He believed it was his duty to call attention to this fact and to urge that action should be taken to counteract the process of deterioration which was going on and had been going on since the war, in the fortunes of the professions.

British justice stood at the very height of its reputation and there was no apparent falling-off in the standard of entrants to the Inns of Court, but that was a short-term view, and in the long run he was quite convinced that something had got to be done to make the Bar attractive to young men of ability and ambition. Before the war a barrister could at any rate expect to be able to make some provision for old age, for his family, and for the education of his children. It was now almost impossible for him to save anything at all. A High Court Judgeship used to be a great incentive to members of the Bar. Today it bid fair to become an expensive luxury which none could afford.

They were told that doctors must have double the remuneration that they had before the war in order to maintain the standard of medicine. "Well," said the Attorney-General, "what about the High Court Judges who receive the same salary as they did 100 years ago."

At the present time it was almost impossible to press for any direct relief in the way of increased salaries or fees, or for any reduction in the general level of taxation. In that time of financial stress they simply could not hope to succeed in that direction, but he was quite certain that something must be done to secure relief for the professions either through schemes for pensions and education purposes or by special allowances for the extraordinary and very necessary expenses, or by some means of that kind. If that was not done the standard of the professions was undoubtedly going to decline. He was prepared to consider any constructive proposals to that and to support them if they were found to be reasonable. Already the Bar Council had considered certain proposals of that kind, but they had to carry them through.

(At the previous Annual General Meeting of the Bar on April 2, 1951, Sir Hartley Shawcross referred to the work of the Committee of the Bar Council which had been studying the possibilities of some kind of pension scheme for members of the Bar. The changed circumstances of modern life, with its redistribution of wealth and its heavy taxation, had made great alterations in the position of the Bar. In the past, members of the Bar usually had some private means which enabled them to survive the sometimes lengthy waiting period before any income could be earned—he himself had been four years at the Bar before he earned £100, and once in active practice the barrister could reasonably expect to make considerable savings out of his earnings. Both these conditions had ceased to exist. Those coming to the Bar must increasingly expect to provide for themselves from the first; they had little prospect of inheriting money and still less of saving money against their retirement. It seemed wholly unjust that the self-employed barrister should not enjoy the same concessions or contributions to pension or insurance schemes which were granted to paid employees.)

Speaking of the legal aid scheme, Sir Lionel Heald said that almost every practising member of the Bar took part in the scheme at substantially reduced fees. In addition, 810 members of the Bar gave their services free on legal aid committees which dealt with more than 5,000 applications a month. Sir Godfrey Russell Vick, Q.C., said that a deputation would see the Lord Chancellor to ascertain the real position about legal aid and taxation of fees.

(In February, 1952, the Council issued a statement in Notes No. 2, on the Legal Aid and Advice Act, 1949, setting out the position and the procedure to be adopted where a cause of complaint concerning taxation of fees arises.)

Very shortly, the position is that where brief fees have been substantially reduced or disallowed on taxation, no useful purpose can be served by the Council submitting a complaint to the proper authorities until such steps as are available for objecting to the taxation have been taken without success. With regard to the disallowance or reduction of fees of two guineas, and in particular of fees for paper work in matrimonial causes, however, it has been decided that in such cases the machinery for seeking a review of the taxation is too cumbersome and that instead the facts should be reported to the Council with a view to a complaint being submitted to the Lord Chancellor's Office.

In its Annual Report, the Bar Council stresses once again the importance of notifying the Secretary at once whenever a member of the Bar has cause to complain about fees being disallowed or materially reduced upon taxation, in order that the Council may take the matter up immediately with the Lord Chancellor's Office.

Speed in reporting a complaint to the Secretary is essential if anything is to be achieved as it is unlikely that help can be given where there has been a long delay in formulating the complaint.

The following notice with regard to procedure on taxation appeared in the *Law Society's Gazette* for August 1951:

COUNSELS' FEES

With reference to the statement on this subject published on p. 108 of the *Gazette* for March, 1951, the Council request that where on taxation there is an appreciable reduction of counsel's fees as set out in the fee note, solicitors should notify counsel as soon as possible (and in any event before the allocatur is issued) in order that counsel may, if he desires, make representations.

Sir Lionel Heald said there was no doubt that under the Criminal Appeal Act, 1907, the Poor Persons Defence Act, 1930, and the Summary Jurisdiction Appeals Act, 1933, Counsel were shockingly under paid. On circuit it cost three times as much to stay at hotels as when he was first called to the Bar, yet the payments were the same. Efforts were to be made to have this put right.

(Typical examples of hardship quoted in the joint Memorandum of the Bar Council and the Law Society were: (i) The trial of *R.* v. *Pople* at Winchester Assizes in March, 1950, lasted for approximately fourteen days—fee: £11. (ii) In the case of *R.* v. *White and Others* which was tried at Manchester and lasted eight days, junior counsel were paid £10 10*s.* each which did not even cover expenses. (iii) Counsel with chambers in Bradford appeared in a case lasting four days at York Assizes (travelling daily to York except for one night spent in York with consequent hotel expenses)—fee: £10 10*s.*)

INNS OF COURT MISSION

The Hon. Mr. Justice Willmer (chairman, Executive Committee) appeals for support for this worthy cause in the following terms: "For three years now theatrical performances have been given by distinguished amateur companies in aid of the funds of the Inns of Court Mission. They have been great successes from every point of view. They proved to be occasions, unfortunately all too infrequent, when members of the Bench and bar and their families could meet on a social occasion. This year, the Stock Exchange Dramatic Society, one of the most eminent companies of amateur actors, has again generously undertaken to give a similar performance in aid of the Mission. The play which they have chosen is "Miranda" by Peter Blackmore, which was a great success when it was on the professional stage. The performance will take place at 7.30 *p.m.* on May 15, 1952, at the Scala Theatre, which is socially most suitable, having ample foyer space." The Mission has assumed the burden of selling tickets and has undertaken responsibility for a share of the theatre expenses amounting to approximately £60. Mr. Justice Willmer expresses the hope that all members of the bar will see the venture is a financial success.

Apart from the social aspect the Executive Committee are sure that members of the bar will feel that the charity concerned is one deserving of the fullest support. Except for the Barristers' Benevolent Association, the Inns of Court Mission is the only charity in which the Bench and bar are collectively interested; and it is the charity through which the bar can, as a profession, show their concern for those whose lot in life lies in less happy and propitious fields of endeavour than their own.

The Executive Committee hope that every member of the bar will do everything he can to make the occasion a success, and suggest that barristers might be able to help by taking tickets themselves and attending the show as well as by mentioning it to their clients. They hope, too, that barristers' clerks will attend and that they will, in turn, encourage their friends in the other branch of the profession to come. Tickets are available at 15*s.*, 12*s.* 6*d.*, 10*s.*, 7*s.* 6*d.*, 5*s.* and 2*s.* 6*d.*, and may be obtained from Lady Willmer, 34, Arkwright Road, N.W.3. (All seats reserved.)

LAW AND PENALTIES IN MAGISTERIAL AND OTHER COURTS

No. 39

WHO IS "A PASSENGER" ON A BUS?

The conductress of a trolley bus was summoned to appear at East Ham Magistrates' Court last month, to answer an information alleging that she had failed to take all reasonable precautions to ensure the safety of passengers alighting from the vehicle, contrary to art. 4 (*c*) of the Public Service Vehicles (Conduct of Drivers, Conductors and Passengers) Regulations, 1936.

For the prosecution, evidence was given that the trolley bus pulled up at a stopping place and five or six passengers, including a woman, tried to board it. The woman got on to the platform where the defendant was standing. The defendant said: "Two only," and the woman—who was not one of the two—proceeded to leave the bus. At the moment that she had one foot on the step of the bus and one foot on the ground, the defendant rang the bell. The bus started, and the woman was thrown to the ground.

For the defendant, who pleaded not guilty, it was urged that the woman thrown to the ground was not a passenger; that she was merely an intending passenger, and therefore art. 4 (*c*) did not apply. Attention was drawn to art. 9 (4) of the regulations, which provides that when a public service vehicle is carrying passengers or waiting to pick up passengers, a passenger or intending passenger shall not enter nor remain in or on the vehicle when requested not to do so by an authorized person, on the ground that the vehicle is carrying its full complement of passengers.

The learned stipendiary magistrate, Mr. J. P. Eddy, Q.C., gave his decision on March 21 last, and stated that the bus was at a recognized stopping place, and accordingly there was an invitation to the woman to board it, or in other words, an offer of carriage. He thought she must be deemed to have accepted the offer of carriage the moment she got on to the platform. She was then on the vehicle. At that moment she acquired the status of a passenger, and the defendant became responsible under the regulations to take all reasonable precautions to ensure her safety. Support for this view was, he thought, afforded by the observations of Lord Goddard, C.J., in *Wilkie* v. *London Passenger Transport Board* (1946) 110 J.P. 215, and of Lord Greene, M.R., in the report of the appeal to the Court of Appeal in the same case in (1947) 111 J.P. 98.

The learned magistrate convicted the defendant, imposed a fine of 40*s*., and ordered her to pay £2 10*s*. costs.

COMMENT

This little case raises a very important question of law, and in view of the unfortunate habit of some conductors and conductresses in restarting a bus without paying sufficient attention to persons entering or leaving the bus, it may well prove to be, in addition, a matter of practical importance.

The question of the stage at which a person entering a bus becomes a passenger, was considered very fully by the present Lord Chief Justice and the Court of Appeal in the case of *Wilkie* v. *London Passenger Transport Board, supra*. It will be recalled that, in that case, Mr. Wilkie, who was employed by the London Passenger Transport Board as a law clerk, was given a pass entitling him to travel free on the Board's railways and omnibuses subject to certain conditions, one of which was that neither the Board nor their servants were to be liable to the holder of the pass or his representative for loss of life, injury or damage to property, however caused. Mr. Wilkie, when on holiday, was about to get on to one of the Board's omnibuses at an authorized stopping place, and when he had hold of the rail and put one foot on the platform, the conductress started the bus by ringing the bell without seeing that it was safe to do so. Mr. Wilkie was thrown to the ground and injured. The case was fought upon the issue of whether the condition in Mr. Wilkie's pass referred to above prevented him from succeeding in the case which he brought, and both the Lord Chief Justice and the Court of Appeal decided in the Board's favour. Mr. Wilkie urged that the condition did not become operative until he was properly on the bus, but this argument did not find favour with the court. Lord Greene, M.R., in the course of the leading judgment in the Court of Appeal, said: "In the case of an ordinary passenger intending to pay his fare, the bus company is clearly inviting him to put himself in a position where the contract of carriage would be made and nobody, I think, suggests that the contract of carriage in the case of an ordinary passenger is made the moment the passenger puts his foot on the bus. It is made when he, by conduct, accepts the offer of carriage, and I should agree that this does not take place until he puts himself either on the platform or inside the bus."

It appears to follow that, in the case reported above, the woman who was compelled to leave the bus acquired the status of a passenger at the moment when she stood with both feet on the platform and that, having acquired that status, she did not lose it until both her feet were again on the ground after she had got off the bus.

The writer thinks that this may be taken a little further; there has recently been publicized in the national press a report of an inquest upon a ninety-five year old woman who boarded a bus and when told to get off by the conductress, hesitated to comply. She finally did so, and when standing with both feet on the ground, clasped the rail while pleading with the conductress to be allowed to travel on the bus.

The report of the inquest made it clear that the conductress loosened the woman's hold upon the rail before she restarted the bus and, apparently, the old lady then fell down and sustained injuries from which she later died. If, however, in this case the bus had been restarted whilst the old lady still held on the rail, it would seem that the conductress might well have been convicted, although the old lady's feet were resting upon the ground at the time the bus was restarted. In other words the old lady would still have retained her status of "passenger."

(The writer is indebted to Mr. G. A. Parkin, clerk to the East Ham Justices, for information in regard to this case.)

No. 40

THEY SOLD THEIR HOUSE TOO WELL

A man and his wife appeared at Birmingham Magistrates' Court last month to answer a charge that they had sold their house at Castle Bromwich, Birmingham, for a price in excess of the controlled price, contrary to s. 7 of the Building Materials and Housing Act, 1945, as amended by s. 43 of the Housing Act, 1949.

For the prosecution, evidence was given that the controlled selling price of the defendants' house was £1,276. They were approached to sell their house and said that they must have £2,000 for it, even though it was controlled, as they could not get a house in Newcastle-under-Lyme (where they intended to move), under £3,000. The house was sold for £2,000 and an extra £724 was handed over by the purchaser to the defendants for which no receipt was given.

The defendants pleaded guilty, and the learned stipendiary magistrate, Mr. J. F. Milward, fined the husband £500 and the wife £50.

COMMENT

It is understood that this case was the first of its kind to be heard by the Birmingham stipendiary magistrate.

It will be recalled that s. 7 of the Act of 1945 provided that where a house had been constructed under a building licence and the licence contained a condition limiting the price for which the house might be sold or the rent at which it might be let, any person who, for a period of four years from the passing of the Act, sold or offered to sell the house for a greater price than the permitted price, or let it at a rent in excess of the permitted rent, should be guilty of an offence. Section 43 of the Housing Act, 1949, extended the period from four years to eight years.

The maximum penalty for a conviction under s. 7 of the Act of 1945 is three months' imprisonment and a fine not exceeding such amount as will, in the opinion of the court, secure that the offender derives no benefit from the offence and the further sum of £100.

PENALTIES

Bristol—March, 1952—embezzling £1—one month's imprisonment.

Bristol—March, 1952—receiving £1 knowing it to have been embezzled—three months' imprisonment. Defendants husband and wife. On the first day of her employment at a shop the wife sold an umbrella but retained £1 of the purchase money which she gave to her husband. Both husband and wife had previous convictions, and at the hearing the husband was sentenced to three months' imprisonment on another charge for which he had previously been conditionally discharged.

West Bromwich—March, 1952—(1) drunk and disorderly, (2) malicious damage to property in a cell, (3) malicious damage to property in a public house—(1) fined £2. (2) fined £1. (3) fined £2 and to pay cost of damage totalling £7. Defendant, a woman aged thirty-two, was refused more liquor by a licensee because she was drunk. She returned later to the house and knocked six beer glasses to the floor, smashing them, and she then broke a window. When placed in a cell she damaged six more windows and an electric light fitting.

THE WEEK IN PARLIAMENT

From Our Lobby Correspondent

WOMEN'S DISABILITIES BILL

The Women's Disabilities Bill, a private member's bill proposed by Dr. Edith Summerskill (Fulham West), failed to pass its Second Reading on the technical point that less than 100 M.P.s voted on the " closure " motion.

Moving the Second Reading, Dr. Summerskill said that she was pleading for certain women who, as the law stood today, could seek no redress in circumstances of exceptional hardship.

It was proposed in cl. 1 that, where a man was in regular employment and defaulted on a maintenance or affiliation order, an order should be made by the court requiring the man's employer to pay to the court certain sums in respect of the arrears and current payments which were due to the applicant. In the event of the employer's failing to do that, then there were certain penalties attached. That clause was in accordance with existing Scottish law.

There was no question of that being a harsh and arbitrary direction by a magistrate who failed to take into account the man's particular circumstances. It would be seen in cl. 1 (1) (*c*) that the order could be made only when it was " just and reasonable in the circumstances " of the case. Furthermore, in cl. 1 (2) an employer might, on application to the court, satisfy the court that there was good reason why he should not comply with the order ; and furthermore, in subs. (7), it would be open to the employer, the respondent and the applicant to make application to the magistrates to vary or cancel the order in the light of new circumstances.

Clause 2 made some further provision for the wife whose marriage was terminated in the courts. Subsection 2 (*a*) was concerned with savings, and provided that they might be divided between husband and wife equally or in any proportion that might seem just to the court.

Subsection 2 (*b*) made provision for the wife who was forced to leave her home on the termination of her marriage. Dr. Summerskill said that, as the law stood, a man could compel his wife to leave the home in order to make room for another woman. The hardship endured by innocent women and children in that position had been commented upon time after time by magistrates who were frequently in contact with cases of that nature. It was proposed in the Bill that the wife in that position should have for her use certain furniture and household goods, while subs. (3) empowered the court to give the wife the tenancy of the flat or house where that might seem to the court to be just and reasonable. Under a proviso to the clause the landlord was protected, and the wife safeguarded against the husband who, in an attempt to circumvent the law, sought to bring the tenancy to an end.

Dr. Summerskill went on to say that the legal right of a wife to an adequate allowance to cover household and personal needs had never been properly established. Clause 3 of the Bill sought to give her the right to apply to the court for help against the husband who refused to give her a reasonable allowance to meet the expenses which she must incur. Where a man failed to comply with an order that he should pay his wife what appeared to be just and reasonable, the money might be deducted from his wages at source. If he still evaded payment, the proceeds of his property, in whatever form, might be vested in the wife to meet the terms of the order.

She said that the Bill aimed at remedying certain fundamental grievances in the home, known to all magistrates and social workers, and by so doing establishing a better relationship between husband and wife, which was bound to be reflected in the family circle.

Lt.-Col. Sir Thomas Moore (Ayr) seconded the Bill. He said that the Bill had certain flaws which could be dealt with in Committee, but it was right in principle and was a good Bill.

Mr. Ronald Bell (Bucks, S.) moved the rejection of the Bill. He said that while cl. 1 was the least objectionable, it involved disturbance of the relationship between employer and employed and involved disclosure to a man's employer of his family circumstances. Nor could it deal with the problem of the man who moved from job to job and from address to address. " We cannot have a floating or negotiable court order being handed around like a bill of exchange from one employer to another," he said.

One of his objections to the second clause was that it proposed to give to courts of summary jurisdiction, which were usually composed of lay magistrates, a real property jurisdiction.

Of cl. 3, he said : " I can conceive of nothing more calculated to introduce strife and disharmony into the home . . . housekeeping money and things of that kind are matters of intimate adjustment and discussion inside the home."

Mr. C. W. Black (Wimbledon), seconding the motion for the rejection, said that the Bill dealt with matters which could be and were being considered by the Royal Commission on marriage and divorce. The Bill would tend to encourage men to avoid marriage and to enter into irregular unions to avoid such severe legal difficulties.

(At this stage an attempt to count the House out failed.)

The Attorney-General said that the Government did not take the view that there was any fundamental objection in principle to the whole of the Bill. That did not mean that there were not grave difficulties involved in it. But if the only result were to be that something on the basis of cl. 1 were to come out of it, he thought it would be well worth while.

One of the difficulties regarding the particular machinery suggested in cl. 1 was that the Confederation of Employers and the trade unions had in the past expressed considerable apprehension about it. It was argued that an employee might be prejudiced by his employer's knowledge of his affairs, particularly if there was an obligation involving reference to affiliation proceedings.

The difficulty about the whole Bill, and particularly cl. 2, was the existence of the Royal Commission. The law covering statutory tenancies and deserted wives was extraordinarily obscure at the present time.

Regarding cl. 3, he thought the general approach should be that they would not encourage interference by the court in married life unless it was absolutely necessary to do so.

He concluded by saying that if the House gave the Bill a Second Reading, the Government would do their best to improve it in Committee.

After further debate, as time was running out, Dr. Summerskill moved the closure and this was carried by fifty-four to twenty votes, but there was no opportunity for a vote on the Bill itself as the majority was insufficient under Standing Orders and the debate lapsed under the rules of the House.

PARLIAMENTARY INTELLIGENCE

Progress of Bills

HOUSE OF LORDS

Thursday, April 24

PRISON BILL, read 2a.
COSTS IN CRIMINAL CASES BILL, read 2a.
MINERS' WELFARE BILL, read 3a.

HOUSE OF COMMONS

Monday, April 21

EMPIRE SETTLEMENT BILL, read 2a.

Tuesday, April 22

FAMILY ALLOWANCES AND NATIONAL INSURANCE BILL, read 1a.
HOUSING BILL, read 2a.

Friday, April 25

COCKFIGHTING BILL, read 2a.
HYPNOTISM BILL, read 2a.

NEW COMMISSIONS

GUILDFORD BOROUGH

Countess of Onslow, Clandon Park, Guildford.

HEREFORD BOROUGH

Alfred Henry Williamson, Wyevale Nurseries, King's Acre, Hereford.

Wilfred William Henry Wood, Gwynfa, 23, Mortimer Road, Hereford.

KINGSTON-ON-THAMES BOROUGH

Charles Leonard Sinclair, 36, Lower Ham Road, Kingston-on-Thames.

MERTHYR TYDFIL BOROUGH

James George Davies, 2, Lawn Terrace, Bethesda Street, Merthyr Tydfil.

Lewis Morgan Davies, 5, Hadyn Terrace, Penydarren, Merthyr Tydfil.

Mrs. Evelyn Louise Evans, Danybryn, Aberfan Road, Aberfan, Merthyr Vale.

Thomas Henry Thomas, M.B.E., Abercanaid House, Abercanaid, Merthyr Tydfil.

Charles Edward Webb, 3, First Row, Ynsfach, Merthyr Tydfil.

William John Williams, 1, Fronheulog, Aberfan, Merthyr Vale.

PERSONALIA

APPOINTMENTS

Mr. N. M. Fowler, deputy town clerk of High Wycombe, has been appointed town clerk in succession to Mr. P. B. Beecroft who is retiring.

Mr. J. E. Siddal, LL.M., D.P.A., town clerk of Wisbech, has been appointed town clerk of New Windsor in succession to Mr. R. Webster Storr. Mr. Siddall, who is forty years of age, was admitted in 1933 and was appointed assistant solicitor at Sheffield. From 1934 until 1939, when he took up his present appointment at Wisbech, he was deputy clerk and solicitor to the River Great Ouse Catchment Board at Cambridge.

OBITUARY

April was a month notable for two losses in the upper ranks of the legal profession which, though foreseen, were none the less severe. Lord Greene and Sir Stafford Cripps, though neither was a self-made man in the sense of Sir Edward Clarke, Lord Birkenhead, or Sir Patrick Hastings, were both men who would have made their mark in any sphere, and probably in any century or any country, independently of the benefits they enjoyed at the outset of their lives. It is not unusual (for persons wishing to belittle a successful man, who was born with a silver spoon in his mouth or even born in the purple) to say that, but for his lucky start, he would not have gone so far: Mr. Churchill and Lord Mountbatten are conspicuous examples of living English leaders to whom this process has been frequently applied. Let it be granted that the two last mentioned men, like Greene and Cripps, had great advantages—above all, the advantage of not having to devote their first thought on reaching manhood to the grim necessity of earning a living. It must equally be granted that many a man who began with similar advantages has made of them no use, or but a second rate use, while the great positions these men reached were, after the first start, of their own achieving. Westminster and Christ Church in Greene's case, Winchester and London University (with a background of old Gloucestershire squires and brilliant legal parentage) in the case of Cripps, should receive due tribute, but the use made of these backgrounds was all their own. It is notable that each of them as an undergraduate won wholly exceptional distinction in pure learning, before they were concerned with law or with their future livelihood. This was natural brilliance, allied to hard work.

Neither man possessed the theatrical attractions of the most popularly famous advocates; neither, probably, would have shone at the Old Bailey or in "fashionable" civil cases. Yet each, unusually young, was a household word (so to speak) in chambers, and the subject of fantastic stories—which yet may have been true—about the fees their clerks had to demand to keep them from being overwhelmed.

The achievement was, in each case, the result of natural talent and aptitude for law, ripened by the traditional English education of their class and generation, coupled with immense care and conscientiousness. Neither man would have been temperamentally capable of the legendary behaviour of some leaders (in Birkenhead's case it was a well-attested fact, and there have been others of whom the tale is plausible) of going into court with unopened briefs.

Greene was some six years the older, and had not the habit which Cripps developed of devoting much time to erratic causes outside the profession—though Greene did much unpaid work of an educational and otherwise unspectacular kind. Greene had also the advantage of an imposing presence and melodious voice whereas Cripps was not impressive to the eye and tended, at least to some ears, to sound harsh and querulous (which seems strange, for his father, Lord Parmoor, possessed one of the most musical speaking voices the present writer can remember).

Greene was essentially the artist, presenting a picture so attractive that the beholder could hardly imagine it was not true to life; Cripps as a young man made his mark in physical science (which led to the strange aberration, for an hereditary Wykehamist, of his proceeding to London University instead of taking up the scholarship he won at New College), and had the faculty of presenting his cases as if they were indisputable scientific truths.

Among our own readers, Cripps was by far the better known, although Greene was most worthily associated with the improvement of public (local as well as central) records, of which we have spoken more than once or twice. But his professional "big stuff" was apt to be before the Privy Council or in the most complicated Chancery proceedings, while Cripps was in great demand for local government work of the intricate and highly remunerated type. Since Greene had been on the bench and in the Lords for years, and Cripps immersed in politics before his final illness, it cannot be said that their deaths in April have left a gap in the working ranks of the profession, but each has left a big gap in the memories of practitioners of middle age.

Sir Wilfrid Bennett, Bt., metropolitan magistrate, died suddenly on April 25 at the age of fifty-four. Educated at Charterhouse and Sandhurst, he was called to the Bar by the Inner Temple in 1924. He became a metropolitan magistrate in 1946.

CORRESPONDENCE

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

I am alarmed by the letter from "Barrister-at-Law" published in your issue of April 19, 1952, lest this give the wrong impression. I have, in my own experience, found myself preferred on more than one occasion to solicitors against whom I have competed.

It must be clear that a solicitor who had undergone five years articles to a town clerk will naturally be preferred to a barrister without the same experience, but there is little doubt that any barrister with the necessary qualifications and experience will, in most cases, find himself considered on his merits, though, necessarily, qualifications will be the more important during the first few years of professional life. Many town clerks, solicitors and otherwise, to whom I have spoken support this, though several point out that they frequently receive applications for posts from barristers with little or no experience in local government, who cannot possibly be considered when solicitors experienced in local government are available.

Yours faithfully,
"ANOTHER BARRISTER."

NOTICE

LAWYERS' CHRISTIAN FELLOWSHIP

The next quarterly meeting of the Lawyers' Christian Fellowship will be held at The Law Society's Hall, Bell Yard, W.C.2, on Monday, May 5, at 6 *p.m.* Tea will be available from 5.30 *p.m.* The meeting, to which all lawyers, law students and visitors are warmly welcomed, will be addressed by Mr. Kenneth de Courcy, Editor of *Intelligence Digest*, on the subject "The Bible and Current Affairs."

RELAYED PROGRAMME

The future of broadcasting in England has been attracting considerable attention in Parliament and Press, and the influence attributed to the activities of the British Broadcasting Corporation must be highly gratifying to the pundits of that paternal and authoritarian Institution. To describe the B.B.C. as purveying all things to all men might be an exaggeration, but its programme-builders may justly claim that it provides something for everybody. Those who fail to find aesthetic satisfaction in Bach and Beethoven can turn at will to dance-music and sentimental ballad; those who have no interest in the recondite information proffered by the Third Programme can always seek light relief in political speeches or the cross-talk of knock-about comedians. The children, when they have enjoyed their fill of fantastic adventure or gangsterism, can be recalled to the edification of the meditative half-hour—though in case of recalcitrance some harassed parents may resort to the educative method described by James Bridie as "Dogmatic assertion coupled with personal violence." And, for the rest, there is always the blessed relief of switching the darned thing off!

Whether this incessant disturbance of the ether has any permanent influence upon the character and mentality of the listener may be doubted. Neither moral exhortation nor cerebral stimulation is likely to be effective when weighed in the balance against the mass appeal to emotion and passion which, day in, day out, every organ of publicity blares forth. Publicity, to be successful, need make no assault upon the critical and analytical faculties ; its function is to impinge on people's habits. And for this purpose almost anything will do, provided it is both continuous and noisy.

This truth is not limited, in its application, to *homo sapiens*. A recent news-item gives strange tidings of revolutionary changes in the chicken-run. Poultry-keepers, whose exploitation of racial rivalry and appeals to family pride had hitherto been ineffective in inducing the Buff Orpingtons to surpass the White Leghorns in their output of eggs, have found the radio-programmes a considerable stimulus to production. Nor has this result been achieved, as one might have expected, by statesman-like utterances from the Ministry of Agriculture or admonitions from the Egg Marketing Board on the social duty of every hen to replenish the earth or the breakfast-table. The principle is simply the old one of " Music While You Work." One poultry-farmer in Norfolk avers that " His hens used to become bored and listless when left unattended for any length of time," but that " any kind of activity in the building keeps them lively." By installing a wireless set and " Maintaining a continuous programme until late in the afternoon " he has succeeded in increasing egg-output by ten *per cent*.

The whole idea is at first sight a little startling since, in the minds of many people, the association between eggs and entertainment is not a happy one. The theatrical custom of which we are thinking has fallen out of use, but we seem to remember a time, before there were such things as ration-books, when eggs (not of the freshest quality) played their part in helping the audience to signify critical disapproval of what was passing on the stage. Co-operation between the entertainer and the egg-producer is certainly something new, but none the less welcome for that.

There are already vague whispers that the new methods are to be tried elsewhere on the farm—in the milking-shed, perhaps, or in the hive. It is well, however, that a start should be made by extending *Woman's Hour* from the home to the chicken-coop, for hens exhibit many idiosyncrasies of behaviour every bit as feminine as those of their human counter-parts. Dull and lackadaisical when left alone, they quickly respond when any notice is taken of them ; in the presence of the opposite sex they are thrown into a state of intense excitement and feverish activity—their eye-lids quiver, their movements become jerky and spasmodic, the sounds they utter monotonous and incoherent. The competition of other females stimulates them to feign a permanent interest in some male of their species, of whose habits of showiness, bombast and infidelity they are well aware from the start, but whose attentions to their rivals they are conventionally expected to resent. At the same time, for some inscrutable reason, they actively cultivate the company of those same rivals, in whose presence they exercise their vocal chords without limit or restraint. Eventually, indifferent to the probable fate that awaits their offspring in this evil world, they go through the pangs of parturition instinctively, with no analysis of motives. Small wonder, then, that the first experiment has been tried among the hens, and where they lead others will surely follow. There are, however, some creatures whose receptivity to radio one instinctively rules out at once—for example, fish. For in these matters of propaganda like follows like, and homoeopathic remedies are best. As a contemporary poet has sung :

" The codfish lays a thousand eggs,
While the helpful hen lays one ;
But the codfish does not cackle
To inform us what she's done.
And so we scorn the modest cod,
While the flaunting hen we prize :
Which indicates to thoughtful minds
That it pays to advertise ! "

It is impossible to imagine the cod, with its unobtrusive and retiring disposition, being influenced on matters of production by such blatant methods of publicity as those described.

But let us return to the Pioneers of Progress among the Poultry. " The birds did not seem to mind what the programme was, but they missed the wireless if it was turned off." Here is another human touch. In nine homes out of ten the radio is blaring uninterruptedly from morning till night, providing a continuous background to conversation and domestic affairs—an unbroken outpouring of sound to which nobody really listens, but of the cessation of which everybody would become instantaneously aware.

The present catholicity of taste among the chickens will be welcome to the busy farmer, but the problem of selectivity must eventually arise. A little practical research should afford reasonable guidance on the choice of programme. There are some useful precedents. It is recorded of St. Francis of Assisi that he preached to the birds, no doubt with excellent spiritual results, and readers of Shaw's *St. Joan* will remember that the hens of Robert de Baudricourt were stimulated to productive activity after a few well-chosen words from the Maid. Some ecclesiastical exercise, therefore, is a safe item for the programme. Then in the realm of music it will be remembered that Haydn entitled one of his symphonies *The Hen*, from the clucking sound contained in one of its themes, while Rimsky-Korsakov wrote a charming opera called *The Golden Cockerel*. Connoisseurs will learn to make a judicious use of the latter during the mating season, and of the former to encourage conviviality among the more broody birds. Above all, to stimulate healthy competition, the hens should be induced to listen-in to sporting events, but here a word of warning is necessary ; Rugby matches must be banned, lest the suggestive shape of the ball lead to disastrous ante-natal complications. It is needless to theorise further, since only experiment can in the long run (so to speak) show whether the best layers are encouraged by performances of drama or chamber-music, or talks on philosophy or art. There may even be a misguided few who will find their fecundity increased by listening to the sub-human noises emitted by devotees of the hottest of jazz ; and if a large proportion of their additional ten *per cent*. prove to be addled, the reason will at any rate be clear. A.L.P.

POPULAR MISCONCEPTIONS OF THE LAW—IV

1

That the Judge's summing up necessarily shows
The way the wind blows.

2

That an Appellate Court will always be slow
To reverse the decision of the Court below.

3

That the Evidence Act is an infallible way
Of getting in hearsay.

4

That somehow or other the doctrine of waiver
Will turn the tide in your favour. J.P.C.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Acquisition of Land—*Voluntary purchase for housing purposes—Restrictive covenants.*

The council are proposing to acquire certain land for housing under Part V of the Housing Act, 1936. The owners are agreeable and the purchase price has been agreed. There are, however, certain restrictive convenants on the land.

The land was requisitioned during the war by the appropriate Minister and a number of nissen type huts were erected thereon which were used as army hutments. When the war ended the huts were handed over to the council, and have since been used for the accommodation of inadequately housed persons. The requisition is still in force and presumably the Minister of Housing and Local Government is now entitled to the benefit thereof. The Ministry reimburse my council the costs of administration and keeping the hutments in repair. The land was put up for sale by public auction some time ago by the owners but was withdrawn, after which my council, as already mentioned, entered into private negotiations for the acquisition thereof. If my council are successful in acquiring this land it is their intention to demolish a number of huts and replace them with permanent buildings. The Ministry have been approached tentatively and in principle seem in agreement with the idea.

Had the land been sold when it was put up for public auction it appears that the purchaser would have taken subject to the existing requisition, and there would have been no question of his having purchased the huts. The position would appear to be the same if a compulsory purchase order is made, *i.e.*, the land alone will be compulsorily acquired and the huts will remain in the ownership of the appropriate Minister.

The Acquisition of Land Act, 1946, requires notices of the making of any compulsory purchase order to be served on the "owners, lessees and occupiers" (except tenants for a month or any period less than a month) of any land included in the order.

I should be glad of your opinion on the following points:

1. Do you consider that a compulsory purchase order can properly be made when the purchase price is agreed, solely to secure the removal of restrictive covenants?
2. Do you consider that the Lands Clauses Acts are incorporated in the case of a purchase by agreement under the Housing Act, 1936, by virtue of s. 1 of the Lands Clauses Consolidation Act, 1845?
3. Do you agree that if a compulsory purchase order is made there will be no question of my council's being involved in the acquisition of these nissen type hutments?
4. Do you consider that notice of the making of compulsory purchase orders should be given to the present occupants of the hutments? (It will be appreciated that these occupants have no legal interest in the land and are merely licensees.)
5. Do you agree that a notice should be served on the appropriate Minister who might be deemed to be an occupier of the land?

DEM.

Answer.

1. As a general proposition of law, we do not think this is legally precluded, but you ask whether it is "proper." We do not like it. Fortunately, the purchase in this case is under the Housing Act, 1936, so that, if our opinion next following is right, the question need not here be considered further.
2. Yes; *see* s. 179 (g) of the Local Government Act, 1933, and sch. 7 thereto.
3. We agree. As we understand the position, they are not the vendor's property, but (legally) an excrescence at present irremovable.
4. No; we do not regard them as "occupiers."
5. Yes.

2.—Bastardy—*Poor Law Amendment Act*, 1844, *s.* 5—*Whether partially repealed.*

In answering P.P. No. 2 at p. 29, *ante*, did you overlook the tenth schedule of the Local Government Act, 1929, which substituted "county or county borough" and "clerk of the county council or town clerk" for the words union, parish, etc.

Further, I am not entirely satisfied with your conclusion that the words quoted have become of no effect. The section is dealing with the custody of a bastard child where its mother is dead, insane or in prison and empowers the court to appoint a custodian so long as the child is not "chargeable to a county or county borough." Chargeability in the old sense is gone, but many children are still maintained by the local authority by virtue of the National Assistance Act, 1948, and the Children Act, 1948. When an application relating to such a child is made under s. 5 of the Act of 1844, would you advise that the justices could award custody to a third party? If one omits the limitation of jurisdiction imposed by the reference to "chargeability," s. 5 is in terms wide enough to allow that course to be followed. Is it not possible that the High Court might hold that children provided with accommodation by, or in the care of a local authority are a charge on that authority, and therefore "chargeable" to that authority, giving "chargeable" its modern interpretation? Are you, in other words, prepared to hold that the word "chargeable" has one meaning only, namely, that given it by the now repealed poor law?

SORTIE.

Answer.

We did not overlook the change made in the poor law system by the Act of 1929 but we did not mention it because of the view we take as to the effect of the complete abolition of the poor law. While we quite appreciate our learned correspondent's point of view, we think that if it had been intended that accommodation or assistance under the National Assistance Act, 1948, could be read into s. 5 of the Poor Law Amendment Act, 1844, Adaptation of Enactments (Regulations) would have been made under s. 62 (2) of the National Assistance Act, 1948, as was done in respect of s. 65 of the Children and Young Persons Act, 1933.

We think the word "chargeable" has a limited meaning and not the wider meaning suggested, but we realize that this is a matter which only the High Court can determine.

3.—Building Materials and Housing Act, 1945.—*Building licensing—Conversion of buildings into houses or flats—Standard rent.*

By virtue of s. 7 of the Building Materials and Housing Act, 1945, as extended by ss. 43 (2) (3) and (4) of the Housing Act, 1949, in the case of houses constructed, or converted or in the course of construction under a licence granted by a local authority under Defence Regulation 56A, conditions may be imposed in the licence limiting the price for which the house may be sold or the rent at which it may be let.

"As the work of conversion varies widely according to the type of property and the circumstances of the area, it must be left to the local authority to decide what is in their judgment a reasonable rent and selling price, having regard to all the relevant circumstances, including the cost of conversion and repair, and any development charge, and to the prevailing rents of comparable properties in the neighbourhood."

The above "quoted" paragraph is taken from circular 48/50 of the Ministry of Health, dated April 17, 1950.

Questions have arisen as to whether the local authority in fixing a maximum rent should make any investigation as to the application of the Rent Restrictions Acts to the property, and have regard to any standard rent thereby disclosed. This would seem to be a question of law.

The point that seems to arise is whether the standard rent has been in any way ousted by the provisions of the 1943 and 1945 Acts. It would certainly appear that it has not been expressly ousted, but it does not appear to be so easy a matter to decide that it has or has not been impliedly ousted.

Will you please advise:

1. Whether the local authority should make any investigation as to the applicability of the Rent Restrictions Acts to the premises;
2. Whether the local authority should have regard to any standard rent which they have ascertained applies to the premises.

ELVED.

Answer.

1. We think not. If they propose to fix a rent lower than the restricted rent, the building owner will surely protest. If they fix a higher rent, their so fixing it will not of itself enable the owner to recover it. In our view, the quoted passage states the position correctly.
2. Again, we think not. Until a standard rent has been fixed by the court, the local authority cannot be sure what it is, and we think it is irrelevant.

4.—Highway—*Obstruction—Town Police Clauses Act*, 1847, *s.* 21—*Photographers.*

Some time ago this council made an order under s. 21 of the Town Police Clauses Act 1847, prohibiting street trading in specified streets in the borough. I enclose a copy of the order, part of which reads: "No . . . photographer shall use the said streets . . . for the purpose of plying his trade or calling." The council have in the

past undertaken a number of successful prosecutions of street photographers under the order. The first case since the decision in *Newman* v. *Lipman* [1950] 2 All E.R. 832, is now pending, and I am considering whether it should be allowed to go forward. The provisions of s. 17 of the L.C.C. (General Powers) Act, 1947, differ from those under which my council operate, but there are enough points of similarity to be disturbing. Lord Goddard, C.J., considered that the L.C.C. Act was an enactment to prevent obstruction. Similarly the power to make orders under s. 21 of the 1847 Act is not directed at street trading as such, but is specifically conferred to prevent obstructions in the streets. The L.C.C. Act makes it unlawful to engage in street trading. The order of my council prohibits the photographer from plying his trade. The main distinctions between the two provisions appear to be these :

1. Section 17 of the L.C.C. Act, in conjunction with the definition section, goes on to define trading as " the selling or exposing or offering for sale of any article or thing in a street," and, according to the recent decision, to limit it to the sale of goods actually present in the street. The expression " plying his trade " in the order is not defined.

2. The order contains a specific reference to photographers, whereas the Act does not.

3. The final part of the order prohibits a number of activities where no sale is involved. But the effect of these provisions is confined to specified classes of persons, so that the possibility which concerned the Lord Chief Justice, of a general prohibition on contracting in the street, does not arise.

I shall be glad of your advice on the following points :

1. Whether the part of the order relating to photographers is properly made within the scope of s. 21, as a measure to prevent obstruction.

2. Assuming that it is, whether the expression " plying his trade " bears a meaning sufficiently close to that of " street trading " in s. 17 of the L.C.C. Act to justify importing into the order a similar definition clause to that contained in the L.C.C. Act, which would have to be interpretated as in *Newman* v. *Lipman*.

3. Generally on the position. CLAUS.

Answer.

The main ground of the failure of the prosecution in *Newman* v. *Lipman*, *supra*, was the limit put upon the meaning of trade. We should not regard that decision as endangering success in a prosecution under that part of your order which is quoted in the query. The street photographer may obstruct, by soliciting, posing his customers, etc., even though sale of the photograph does not take place.

5.—Licensing—*Definition of restrictive conditions attached to so-called " table licence."*

A restaurant, of the road house type, has a full licence subject to the following conditions :

1. That there should be no bar ;
2. That there should be no off sales ;
3. That intoxicating liquors should only be sold with meals costing not less than 1*s.* 6*d.*

Questions are always arising as to whether the licensee is entitled to serve drink in the following exampled instances :

1. Can a cocktail be served to a diner in the lounge before he takes a course lunch or dinner in the restaurant ?

2. Can a diner be served with a liqueur with coffee in the lounge after dinner ?

3. Can a diner who may have had a cocktail before dinner and a liqueur after dinner be served with a whisky and soda during the evening, say an hour or so after finishing coffee and liqueur ? This is particularly important on the occasions of dinner-dances, when there may even be an extension of the licence.

4. If four persons have dined together finishing about 8.30 *p.m.* and wish to have drinks at 10 *p.m.*, have they each got to order another meal costing 1*s.* 6*d.* or will one plate of sandwiches costing 1*s.* 6*d.* justify a drink each, and can they have more than one drink each provided that it is taken within say half an hour of the placing of the order for sandwiches ? Alternatively, can each have as many drinks as he likes because he has had dinner ?

We should very much welcome the editor's opinion on what appears to us to be a difficult problem. It would be a very great benefit to us if we could have the opinion within the next twelve days. NOON.

Answer.

The licence referred to by our correspondent has attached to it such conditions as reduces it to what is known amongst licensed victuallers as a " table licence "—an expression not to be found in licensing law, but explanatory of the class of trade that was intended to be conducted when the licence was applied for and monopoly value was assessed.

Conditions are, of course, fixed by the licensing justices who alone determine their scope. No doubt some elasticity is permitted, such as would enable a liqueur to be served with coffee in the lounge immediately after dinner ; but we would be surprised if the licensing justices, when attaching a condition that intoxicating liquor should " only be sold with meals," had in contemplation that the consumption of a meal costing not less than 1*s.* 6*d.* entitled a person who had consumed a meal, or was about to do so, to an unrestricted privilege of purchasing intoxicating liquor quite detached from the meal.

We think that licensing justices could properly define their conditions by answering our correspondent's questions :

1. In the affirmative, if the service of the cocktail was so proximate in time to the meal as really to be part of the meal.
2. In the affirmative.
3. In the negative.
4. So as to require that the drink that is sold to a person must be sold " with " that person's meal.

6.—Licensing—*Premises about to be demolished—Removal granted—Whether demolition may take place before removal takes effect.*

We act for brewers who own a country public house which had to be vacated some years ago as a result of nearby drainage works rendering the building unsafe.

The justices, some two years ago, granted a special removal to new premises to be erected on the garden of the existing premises. Owing to licence difficulties the new building cannot yet be erected. The old building has now become so unsafe that it is desirable that it should be demolished.

We cannot trace any statutory provision which helps in such a case, and shall be glad to know if there is any reason why, on the facts being explained to the justices, at brewster or transfer sessions, they should not give their consent to the demolition of the old building.

The brewers are, naturally, anxious that nothing should be done which will prejudice the existing licence. NOMAD.

Answer.

There is no legal reason why the premises from which the licence is to be removed shall not be demolished before the removal actually takes effect.

Our correspondent tells us that a " special " removal has been granted to new premises to be erected. There seems to be some mistake here, inasmuch as the law does not empower the provisional grant of a special removal such as s. 33 (4) of the Licensing (Consolidation) Act, 1910, empowers in the case of an ordinary removal. If the removal has been granted as a " special removal " to premises not yet in being, we suggest that the grant is *ultra vires* and should be treated as a nullity and a provisional ordinary removal be applied for at brewster sessions.

7.—Licensing—" *Supper hour extension*"—*Whether it expires on expiry of term licence.*

We act for the proprietors of a restaurant who, in 1949, obtained a licence to sell intoxicating liquors. This licence was for a term of 3½ years, which expires this year and it is therefore necessary for us to apply at the forthcoming brewster sessions for a new licence and we have every hope of obtaining, upon this occasion, an annual licence.

In 1950 we applied for and obtained a certificate under s. 3 of the Licensing Act, 1921. We are of the opinion that this certificate attaches to the premises and will not die upon the expiration of the current licence and therefore do not propose to make any further application under s. 3 of the Licensing Act, 1921.

We shall be obliged if you will kindly let us have the benefit of your views upon the matter. OXON.

Answer.

The term licence will not expire until after the new grant comes into force ; thus, the premises will not cease to be licensed premises and there will be no break in the effective continuance of the certificate under s. 3 of the Licensing Act, 1921.

Therefore, we do not think that the certificate will lapse with the current term licence, or that it is necessary to seek renewal.

8.—Magistrates—*Practice and procedure—Informations laid by post.*

It is the practice of the majority of courts of summary jurisdiction to accept by post forms of information from government departments. These are signed by the barrister or solicitor who will conduct the prosecution. The clerk to the justices gets the informations and summonses signed by one of his justices and hands them to the police for service. I shall be glad if you can advise whether an information so laid by post is in order. TONE.

Answer.

In s. 10 of the Summary Jurisdiction Act, 1848, it is enacted that every information shall be laid " by the informant in person or by his counsel or attorney or other person authorized in that behalf." This indicates that someone must attend before the justices who is asked to grant process. The practice of sending written informations by post, however convenient, seems to be irregular.

See also answers at 101 J.P.N. 498, 606, and 102 J.P.N. 723.

9.—Magistrates—*Practice and procedure—Open court—Charge of careless driving—Material witness in hospital—Taking his evidence in a room at the hospital.*

A lorry driver has been summoned for driving his vehicle without due care and attention contrary to s. 12, Road Traffic Act, 1930. The proceedings arise from an accident in which a cyclist was seriously injured and is still detained in hospital.

The case has been before the magistrates' court when it was adjourned *sine die*, for a date to be fixed when the cyclist, who is a material witness, would be fit to attend court.

The case has now stood adjourned for a period of two months (actually three months from the date of the alleged offence), and it is now found that the cyclist will be in hospital for a further two months and it is not known how long it will be before he is fit to attend court.

In view of the obvious disadvantage of a prolonged adjournment it has been suggested that the cyclist's evidence might be taken in hospital, and the procedure suggested is that the case be opened in the normal manner at the magistrates' court, then the whole court (magistrates, magistrates' clerk, prosecutor, defence solicitor, defendant and press) adjourn to a special room at the hospital where the cyclist's evidence is taken and the court then re-adjourn back to the magistrates' court.

In your opinion can such procedure be adopted in non indictable cases? J.EBORACUM.

Answer.

No—*see* Summary Jurisdiction Act, 1879, s. 20. The room in the hospital is certainly not a petty sessional courthouse, and we do not think it could properly be appointed an occasional courthouse merely for the hearing of this one case.

10.—Public Utilities Street Works Act, 1950.—*Telephone poles—Cost of removal.*

Telephone poles which were placed within the boundaries of certain county roads many years ago now constitute a danger to traffic and the county council would like the Post Office Telephones Department to remove the poles and set them further back. I have been unable to find anything in the above Act to cover a case of this sort, *i.e.*, where no works are contemplated by the highway authority, and I should be glad to know whether the county council can request the Post Office to remove these poles at the expense of the Post Office. Many of these poles have been in position for over thirty years, and it is not possible to ascertain whether the positions of the poles were agreed to by the highways authority when they were erected. F. DEP.

Answer.

In the circumstances you describe, we know of no power enabling the local authority to require the Post Office to remove the poles at the latter's expense, though there is nothing to stop the county council from seeking the Post Office's agreement.

11.—Road Traffic Acts—*Notice of intended prosecution—Notice signed by chief constable stating his intention to prosecute—Information laid by a superintendent—Validity of notice.*

We are acting for a defendant who has been summoned under s. 12 of the Road Traffic Act for driving without due care and attention or, in the alternative, without reasonable consideration for other persons using the road.

The information has been laid by a superintendent of police, but the notice of the intended prosecution was sent by the chief constable of the county borough in question. The notice from the chief constable is in the following terms: ". . . I hereby give you notice that it is my intention to institute proceedings against you alleging that you drove your motor car . . ." The letter is, in fact, signed on behalf of the chief constable.

We take it that it is in order for the authorized agent of a person to give this notice, but it does occur to us that the particular circumstances are precisely the same as if the notice has been given by a Mr. White, and the information laid by a Mr. Black.

Will you please let us know whether you feel this point is a sound one. We can find no particular authority on the question, although the wording of s. 21 of the Road Traffic Act is in very similar terms to the wording of s. 9 of the Motor Car Act, 1903. Whether the Scottish cases quoted at the bottom of p. 871 of vol. 42 of the *English and Empire Digest* would assist we are, of course, unable to say, as we have no copies of the reports.

Any help that you can give us will be much appreciated. JEWEL.

Answer.

We think that provided the notice complies with s. 21 of the 1930 Act by specifying the nature of the alleged offence and the time and place of its commission it is in order. The laying of an information by someone other than the person who signed the notice, provided it is an information relating to the same alleged offence, cannot in our view affect the validity of the notice.

12.—Water Act, 1945, s. 37—*Recovery of costs of domestic supply for new buildings.*

A builds two houses outside a town at a distance of two or three hundred yards from the nearest water main. He signs a printed form and hands it to the local authority which is the statutory undertaker for supplying water in the area. The form is headed "Application for water supply" and it reads: "I, the undersigned, hereby request you to supply the under-mentioned property belonging to, or now occupied by me, in accordance with and subject to the terms and conditions, rules and regulations, made and issued by the undertakers."

The waterworks manager pointed out to the applicant that he would have to contribute to the cost of the extension to the water main in accordance with s. 37 of the Water Act, 1945. An estimate was made of the cost and the applicant was told the estimated amount of the yearly contribution. He agreed to the terms by word of mouth, but did not sign any written form of agreement or undertaking. The local authority thereupon extended the main and both houses now have a piped supply. The owner, however, refuses to pay the yearly contributions under s. 37 of the Act. He denies having undertaken to do so, and claims that he is not liable in the absence of an undertaking in writing.

(1) Must an undertaking under the section be in writing?

(2) Would not the written request followed by a verbal agreement, provided the verbal agreement can be proved, be sufficient to bind the applicant?

(3) The owner of the houses has taken and is enjoying the piped supply which would seem to amount to part performance of the alleged agreement. Would not this finally decide the issue? FOP.

Answer.

(1) In our opinion, no.

(2) We think an oral undertaking to pay would suffice. The written request would be admissible in evidence as to the existence of such an undertaking.

(3) As we do not consider that the undertaking under the section requires to be in writing, the equitable doctrine of part performance has no application, but we certainly think that the conduct of the householder in accepting the supply is strong and admissible evidence of the existence of an oral undertaking, when considered in conjunction with all the other circumstances of the case.

OFFICIAL AND CLASSIFIED ADVERTISEMENTS, ETC. (*contd.*)

CITY OF BIRMINGHAM

Legal Assistant

AS a result of promotion within the Town Clerk's Department a vacancy arises in the post of legal assistant. The post affords an opportunity of valuable experience; the successful applicant will serve as personal assistant to the Assistant Town Clerk and will deal with legal problems of wide variety and interest. Salary A.P.T. VI (£645—£710). Pension scheme, medical examination. Applications with three recent testimonials (copies) to Town Clerk, Room 30B, Council House, Birmingham, by May 16, 1952. Canvassing disqualifies.

MIDDLESEX COMBINED PROBATION COMMITTEE

Appointment of Senior Probation Officer and Full-time Male Probation Officers

APPLICATIONS are invited for the above appointments. Senior Probation Officer must be a serving Probation Officer with experience. Seniority allowance of £75 p.a. Full-time Male Probation Officers must be not less than twenty-three nor more than forty years of age except in the case of a serving Probation Officer. All appointments and salaries according to Probation Rules, 1949 to 1952. £30 p.a. Metropolitan addition. Subject to superannuation deductions and medical assessment. Motor car allowance provided. Application forms from Principal Probation Officer, Middlesex House, Vauxhall Bridge Road, S.W.1, to be returned to the undersigned by May 16, 1952 (quoting K.699 J.P.).

C. W. RADCLIFFE,
Clerk to the Probation Committee.

Guildhall,
Westminster, S.W.1.

HOLLYWOOD MANOR HOME FOR BOYS

APPLICATIONS are invited for the position of Assistant Warden for this Probation Home, taking thirty boys, 16-17-18. Salary £360, less £78 for board, etc. A joint appointment might be made of man and wife if the latter undertakes Assistant Matron's duties. Joint salary £515 less £148. Applications, stating age, qualifications and full particulars, enclosing copies of recent testimonials, to Secretary, Hollywood Manor, West Kingsdown, Sevenoaks.

BOROUGH OF BEDDINGTON AND WALLINGTON

Town Clerk's Department

Legal Assistant (Unadmitted)

APPLICATIONS are invited for the above appointment at a salary in accordance with Grade A.P.T. IV (£530—£575) plus London Weighting.

Previous local government service is not essential, but applicants should have considerable experience of conveyancing and general legal work.

Forms of application may be obtained from the undersigned, to whom they must be returned not later than Monday, May 19, 1952.

A. B. BATEMAN,
Town Clerk.

Town Hall,
Wallington.
May 2, 1952.

GLOUCESTERSHIRE (COMBINED AREAS) PROBATION COMMITTEE

Appointment of Whole-time Female Probation Officer

APPLICATIONS are invited for the above appointment. Applicants must be not less than 23 nor more than 40 years of age, except in the case of whole-time serving officers.

The appointment will be subject to the Probation Rules, 1949 to 1952, and the salary in accordance with the prescribed scale.

The successful applicant will be required to pass a medical examination, and will be stationed at Gloucester.

Applications, stating date of birth, present position and salary, previous employment, qualifications and experience, together with copies of two recent testimonials, must reach me not later than May 10, 1952.

GUY H. DAVIS,
Clerk of the Committee.

Shire Hall,
Gloucester.

Amended Notice

CITY OF WAKEFIELD

Appointment of First Assistant to Clerk to the Justices

APPLICATIONS are invited for the above appointment.

Applicants should have had extensive experience of the duties of an assistant to a justices' clerk, including the typewriting of depositions and be capable of acting as clerk of the court when required. The salary will be equivalent to Grade A.P.T. V of the N.J.C. Scales (£570—£620 per annum).

The appointment is subject to the provisions of the Local Government Superannuation Act, 1937, and the successful candidate will be required to pass a medical examination.

Applications, stating age and particulars of experience, with names and addresses of three persons to whom reference may be made, and endorsed "First Assistant" should reach the undersigned not later than May 14, 1952.

RALPH SWEETING,
Clerk to the Justices.

Magistrates' Clerk's Office,
Town Hall,
Wakefield.

EAST NORFOLK PROBATION AREA

Appointment of Whole-time Probation Officers

THE East Norfolk Probation Area Committee invites applications for the appointment of a male probation officer and of a female probation officer, to be stationed at East Dereham and Norwich respectively. The service of each officer will be assigned to several county petty sessional divisions and the persons appointed will each be required to provide a motor car for use in connexion with their duties for which use travelling allowances in accordance with the Scheme of the National Joint Council for Local Authorities' A.P.T. and Clerical Services will be payable.

The appointments, and salaries payable, will be in accordance with the Probation Rules and the selected candidates will be required to pass a medical examination and to act under the supervision and direction of the senior probation officer for the area.

Applications, stating age, qualifications and experience, together with the names and addresses of two persons to whom reference can be made, should be received by the undersigned not later than May 17, 1952.

H. OSWALD BROWN,
Secretary to the East Norfolk Probation Area Committee.

County Offices,
Thorpe Road,
Norwich.

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Printed in Great Britain by R. J. Acford Ltd., Industrial Estate, Chichester, Sussex, and published each Saturday by the Proprietors, Justice of the Peace Ltd., at the Office of the "Justice of the Peace and Local Government Review," Little London, Chichester, Sussex. Registered at the G.P.O. as a newspaper. Saturday, May 3, 1952. Price 2s. 3d. with Reports, post free 2s. 5d.; without Reports 1s. 3d., post free 1s. 5d. Subscription rates: £6 per annum with Reports; £3 10s. per annum without Reports.